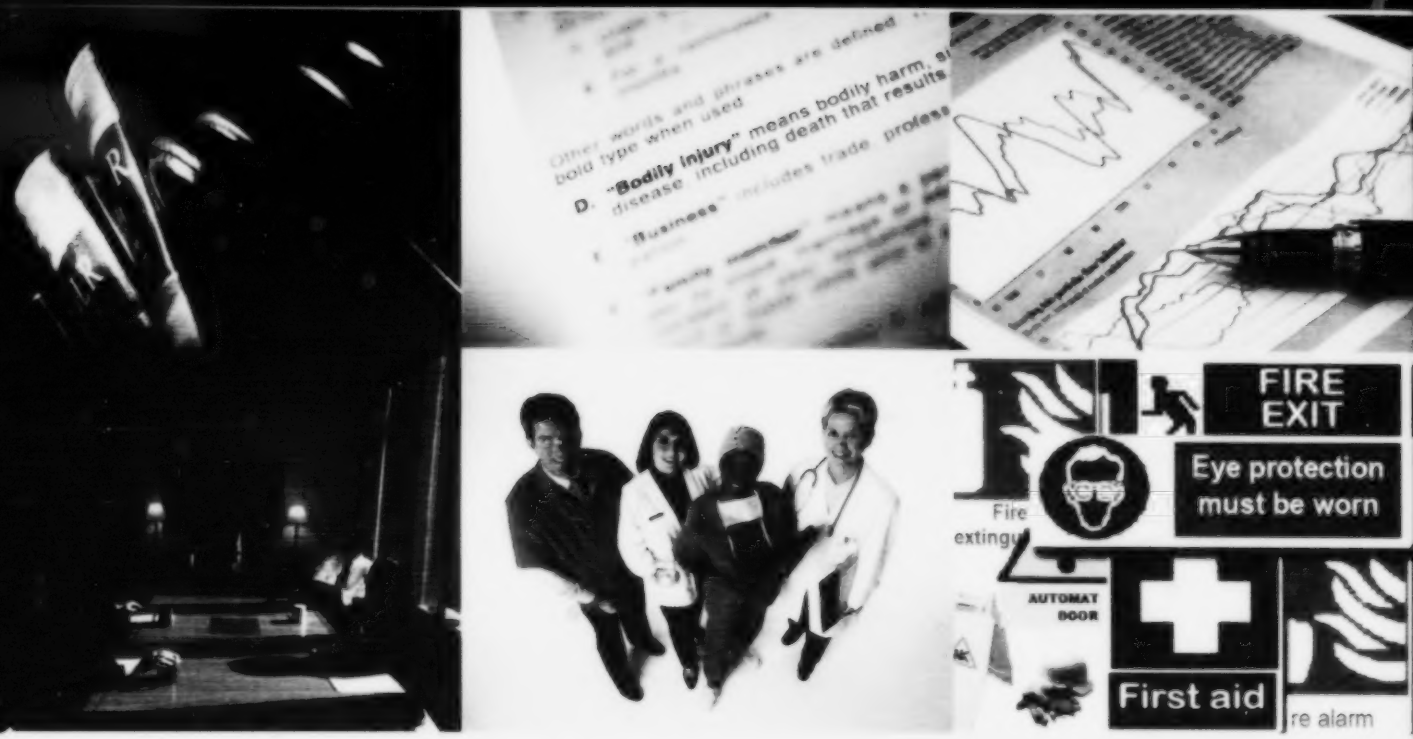
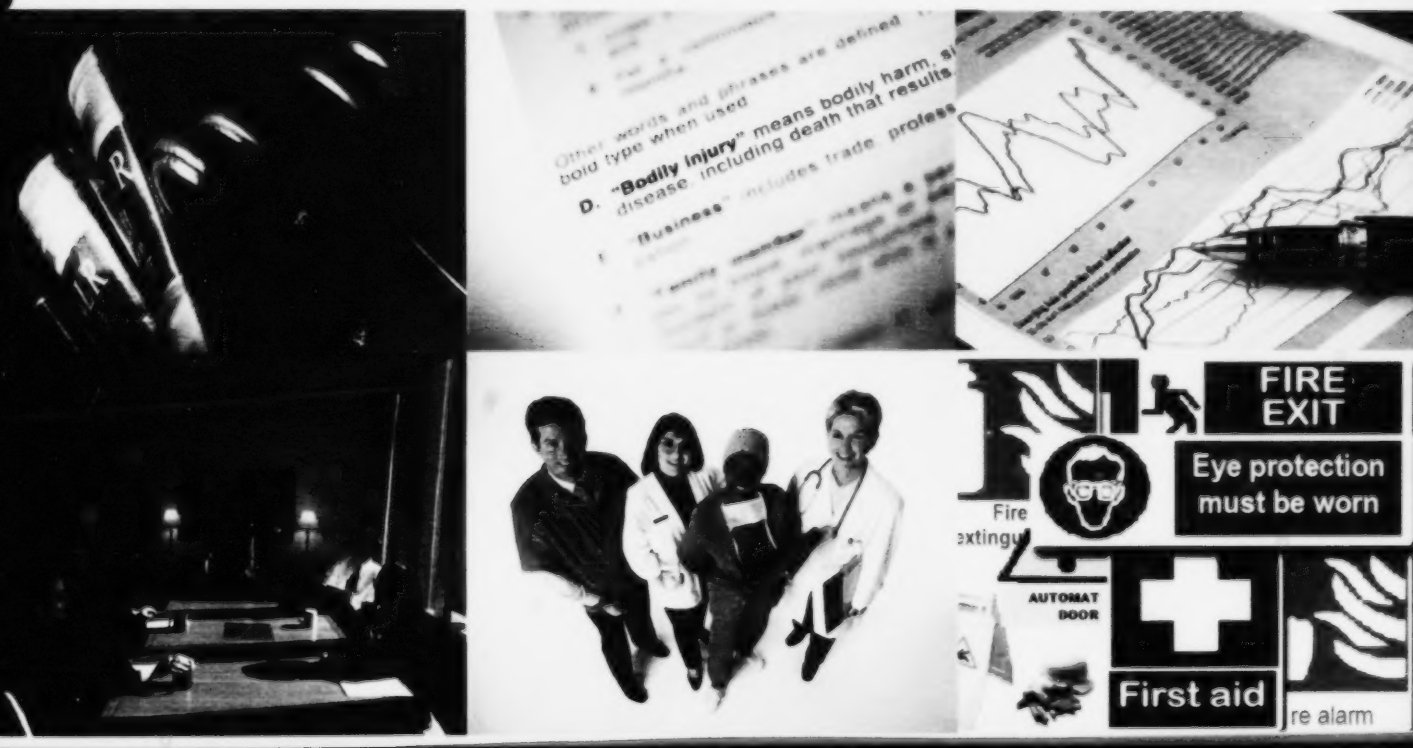


Strengthening the System

An Independent Review of New Brunswick's Workplace Health, Safety and Compensation System

March 2008



IN MEMORIAM
John Mahar
WHSCC Board of Directors

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Independent Review Panel | Comité d'étude indépendant

March 3, 2008

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Minister Doherty and Ms. Dugas

On behalf of the Independent Review Panel, I am pleased to submit the completed report of the review of New Brunswick's workplace health, safety and compensation system.

Each of the six questions posed in Phase II of the Panel's Terms of Reference have been addressed separately in this report.

The Independent Review Panel members have appreciated the opportunity to meet with the workers, employers and the public of the Province of New Brunswick and are ever thankful for their insight.

Sincerely

Louis R. Comeau
Chair

The Report

of the

Independent Review Panel

on

New Brunswick's

Workplace Health, Safety and Compensation System

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Acknowledgements

The Independent Review Panel would like to express its sincere gratitude to the many individuals and organizations who took the time to provide their thoughts and opinions during the review process through written submissions, emails, telephone conversations or presentations during the Panel's public consultations. Their insights have been invaluable and have enabled the Panel to achieve a better understanding of opportunities for improvement to New Brunswick's workplace health, safety and compensation system.

The Panel would also like to thank the Board of Directors, senior management and staff of the Workplace Health, Safety and Compensation Commission, the Appeals Tribunal Chair and staff for their unconditional support in responding to the many questions and requests for information and for providing insight into the daily operations of the system. Without their cooperation it would have been much more difficult to fulfill our mandate.

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Any errors or omissions are solely the responsibility of the members of the Panel.

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Executive Summary

The Report of the Independent Review Panel is set out in six main sections based on the questions asked in its mandate: Governance, Prevention of Injuries, Coverage and Benefits, Claims Process/Health Care Delivery, Appeals Tribunal, and Financial Performance.

The Panel, through extensive research, has outlined the current situation of New Brunswick's workplace health, safety and compensation system and compared it where possible, with other Canadian jurisdictions. The Panel's deliberations on issues that were identified during the course of the Panel's mandate and that were heard during the consultation process are discussed prior to any recommendation(s) put forth for consideration by WHSCC. The thrust of the Independent Review Panel's recommendations are aimed at strengthening the current system while keeping in mind the balance necessary to have a fully funded system with the best possible benefits and the lowest possible assessment rates in Atlantic Canada as WHSCC moves forward in the 21st century.

Governance

The Independent Review Panel was asked to assess how well the Workplace Health, Safety and Compensation Commission compares to other Canadian jurisdictions in terms of the structure of the Board of governance, policy development and foresight, and stakeholder input.

WHSCC governance is the collective responsibility of the people who serve as Directors. They must serve in the best interests of the organization, not a particular stakeholder group.

The thrust of the Independent Review Panel's governance recommendations is to create a more independent Commission that is stakeholder driven, as well as to strengthen the accountability of the WHSCC to its stakeholders. Although the structure of the Board of governance is similar to other Canadian jurisdictions, the intent is to underscore one of the original Meredith Principles - that of an autonomous agency.

While the Independent Review Panel heard that the Workplace Health, Safety and Compensation Commission does consult stakeholders, the Panel believes there is a need for a more formal consultation process such as is found in other jurisdictions. This would ensure the active engagement of all stakeholders in the policy development and renewal processes.

Although the purpose of the Independent Review Panel is to identify opportunities for improvement as WHSCC looks to the future, the Panel sees no reason to deviate from the original Meredith Principle of an independent agency:

> **The governing Board is both autonomous and non-political. The Board is financially independent of government or any special interest group.**

Governance – Recommendations

1. *The Independent Review Panel recommends a new composition of the Board of Directors – a Chairperson, four employer and four worker representatives, as well as the President and CEO of the Commission and the Chair of the Appeals Tribunal, both as non-voting members. Consideration should also be given to a Vice-chair as part of succession planning for the Chair. As well, the Vice-chair would have specific responsibilities of chairing the Governance/Human Resources Committee recommended later in this section.*

2. *The Independent Review Panel recommends the elimination of the public member position from the Board of Directors.*

3. *The Independent Review Panel recommends the composition of the Board of Directors be representative of the various regions of New Brunswick and reflective of gender and diversity of all stakeholders of the Commission.*

4. *The Independent Review Panel recommends four year terms for the Chair and Board members which may be renewed once.*

5. *The Independent Review Panel recommends increased flexibility for appointments. Although the Act provides for staggered appointments for Board members it could also allow that if a replacement is appointed to a Board position, that person could be eligible to be re-appointed for two full terms, not just the remainder of the term appointment and one additional term.*

6. *The Independent Review Panel recommends the Board of Directors adopt a formal process to recruit, select, and appoint the President and CEO.*

7. *The Independent Review Panel recommends a formal process should be identified to select candidates for the Board of Directors.*

8. *The Independent Review Panel recommends the WHSCC develop a list of clearly defined competencies for the Board of Directors to ensure that individuals with the right skills are selected for nomination from the various stakeholder groups. It is expected the selection process be managed by the Board of Directors with the appointment by Government.*

9. *The Independent Review Panel recommends the establishment of three Committees of the Board of Directors to ensure specific oversight of certain critical areas – Investment Committee, Audit/Finance Committee, and Governance/Human Resources Committee. The Committees would be appointed by the Board on recommendation of the Chair and as always, ensuring equal stakeholder representation on each Committee.*

10. *The Independent Review Panel recommends the Government of New Brunswick direct the Auditor General to conduct a value-for-money audit of the WHSCC every five years to ensure public accountability of the Commission rather than mandatory periodic reviews by an independent commission.*

11. *The Independent Review Panel recommends that Government give the authority to the Workplace Health, Safety and Compensation Commission to negotiate, enter into, and sign its own collective agreements.*

12. *The Independent Review Panel recommends that WHSCC take measures to better define the roles and responsibilities of the Injured Workers' Advisory Committee.*

13. *The Independent Review Panel recommends the WHSCC develop a formal consultation process to ensure the active engagement of all stakeholders in the policy development and renewal processes.*

14. *The Independent Review Panel recommends the Commission's stakeholder list be posted on its website.*

15. *The Independent Review Panel recommends the Workers' Compensation Act should be written in plain and consistent language. It should be reorganized in a logical, sequential, and grouped manner and definitions throughout the Act should be updated and clarified where necessary.*

Prevention of Injuries

The Independent Review Panel was asked to assess how well the Workplace Health, Safety and Compensation Commission compares to other Canadian jurisdictions in addressing prevention of injuries, including occupational health and safety education, resources allocated to education, and results achieved, such as measures of accident frequency.

The Panel's research indicates, based on published benchmarks such as the injury frequency rate, lost time claims, and fatality rates that New Brunswick compares very well to other jurisdictions. In New Brunswick, the accident frequency rate declined 21 percent from 2001 to 2005 and remains the second lowest in Canada. Over a 13 year period (1993-2005), New Brunswick's fatality rate was among the lowest at 4.5 work-related deaths per 100,000 workers.

Having reviewed practices in all jurisdictions, it is very difficult to compare and to determine best practices within the scope and timeframe of the Panel's mandate. This is further complicated by the fact that the responsibility for prevention and enforcement may be administered differently in each jurisdiction.

The Independent Review Panel, however, is convinced that all workplace injuries are preventable. Aside from the human costs, injuries result in costs that could be spent on improving benefits and/or making New Brunswick industries more competitive.

The Independent Review Panel believes that prevention is of paramount importance and is a key factor in cost savings for the New Brunswick Workplace Health, Safety and Compensation Commission. The objective of the Panel's recommendations is to make New Brunswick the model for the prevention of injuries.

It is recognized that the only way to improve costs and to therefore have the capacity to either improve benefits and/or lower assessment rates is to contain accidents and have more timely returns to a safe workplace.

How then, can the New Brunswick workplace become an occupational health and safety model for all of Canada? How does New Brunswick create a culture of zero accident tolerance in the workplace? How can accident causes be controlled? Ensuring that the workplace is mechanically and physically safe is the first priority. Education and enforcement are other key components.

The Occupational Health and Safety Act spells out, in a broad sense, the requirements and conditions for a safe workplace. It is the wide-spread acceptance of the core set of policies and beliefs that is inherent in the Act that is essential for real progress to be made on the prevention front.

Of necessity, the Independent Review Panel's mandate required it to focus on strategic recommendations. The Panel suggests that while statistics show that New Brunswick is doing very well, New Brunswick must still strive to adopt or incorporate best practices nation-wide, making it a leader in occupational health and safety.

Prevention of Injuries - Recommendations

16. *The Independent Review Panel recommends the WHSCC actively pursue programs in consultation with stakeholders to achieve the governing goal of an improved safety culture and a zero tolerance of workplace injuries in New Brunswick.*

17. *The Independent Review Panel recommends that occupational health and safety be an integral part of the New Brunswick school curriculum.*

18. *The Independent Review Committee recommends that the Commission's focus on youth be expanded to new employee orientation, new employee job safety, and seniors returning to employment, with an emphasis on the promotion of safety for anyone starting a new job.*

19. *The Independent Review Committee recommends that the Commission explore opportunities to provide funding for the development and offering of training programs and resources by external agencies, including cooperative programs with the New Brunswick Federation of Labour, Canadian Federation of Independent Business, and others.*

20. *The Independent Review Committee recommends the allocation of resources by the Commission for the development of web based safety training programs with focus areas respecting legislative requirements, management responsibilities, and orientation programs for new workers.*

21. *The Independent Review Panel recommends the WHSCC expand safety association programs similar to the Construction and Forestry industries model to other industry sectors, including health care.*

22. *The Independent Review Panel recommends increasing the provincial government grant to WHSCC to cover costs of non-assessed employers, including self-insured employers, to reflect cost of the service and to allow for additional inspections for self-insured and non-insured employers.*

23. *The Independent Review Panel recommends the Commission review the compliance and enforcement tools available to it, including additional inspections, stop-work orders, ticketing, and demerit fines in workplaces requiring increased attention, as well as incentives for undertaking effective prevention programs.*

24. *The Independent Review Panel acknowledges that the introduction of new industries coming to New Brunswick and the expansion of some existing industries may present special prevention challenges and recommends the Commission appropriate the resources required to address these industries and projects.*

Coverage and Benefits

The Independent Review Panel was asked to assess how well does the Workplace Health, Safety and Compensation Commission's legislated scope of coverage compare to other Canadian jurisdictions, including: number of workers covered; benefits offered to injured workers; treatment of workers while on benefits; and back-to-work activity reports.

In New Brunswick in 2006, 81 percent of injured workers surveyed indicated that they were satisfied with the Commission's delivery of service as were 84 percent of registered employers.

New Brunswick's workplace health, safety and compensation system provides coverage to a high percentage of the workforce (93.9 percent in 2006) and remains one of the jurisdictions with very high percentage coverage. The percentage of the workforce covered in other jurisdictions in 2005 ranged from 67.19 percent in Manitoba to 100 percent in Northwest Territories and Nunavut.

The proportion of workers covered for full wage loss benefits in New Brunswick is estimated at just under 85 percent in 2005 and was similar to the top four other provinces which also are close to 85 percent – Ontario, Québec, Manitoba, and British Columbia. Furthermore, 84.7 percent of workers were covered for their full earnings with the current maximum compensable earning level of $53,200 in 2007 and is among the best in Canada.

Although there are variations in benefit levels across Canada, New Brunswick offers the range of benefits found in other jurisdictions.

New Brunswick's percentage of earnings benefits (85 percent) is comparable to any jurisdiction from Ontario east. An important consideration is that New Brunswick's benefits are indexed at the full Consumer Price Index for inflation protection. Morneau Sobeco indicated that although Québec's percentage of earnings benefits is 90 percent, an

adjustment under the *Income Tax Act* has the effect of a reduced benefit level for the majority of injured workers who are effectively getting less than 90 percent of net.

New Brunswick does not allow for injured workers to receive a top-up to their compensation benefits, although seven jurisdictions do permit tops-ups without claw back including Nova Scotia.

Currently, New Brunswick does not have a minimum compensable benefit. In order to receive minimum compensable benefits (50 percent of NBIAE), an injured worker would have had to be totally disabled for 24 months and have been injured between 1982 and 1993. Five other jurisdictions do not provide minimum compensable earnings including Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.

The current five percent annuity is comparable to what is offered in other jurisdictions. Saskatchewan and Yukon set aside 10 percent annuity, but neither jurisdiction allows for top-ups as it is considered remuneration.

It was the view of the Independent Review Panel that injured workers were not fully aware of all benefits available to them including personal care and independent living allowances and permanent partial disability awards. The Panel suggests a more concerted effort be put forth to educate workers on benefits offered by the Commission.

The Independent Review Panel was unable to develop a clear consensus on the top-ups and three-day waiting period issues.

The Chair and the workers' representative would recommend allowance for negotiated, voluntary top-ups, without claw backs.

The Chair and workers' representative would also make the following recommendations:

- **The immediate reduction of the waiting period to two days and a reimbursement of the two-day wait after 10 days on claim, as well as a directed process by the WHSCC to review timely alternatives for benefit changes.**

- **The establishment of rules for compensation of injured workers for the day of an injury provided the worker reports the injury that day.**

The employers' representative does not support these positions or any eventual elimination of the waiting period.

The Chair and the employers' representative further do not support the creation of a special exemption for firefighters and police officers. The elimination of any waiting period for firefighters and police officers is supported by the workers' representative.

Short of full consensus on the above, the Panel believes these issues are best left to the WHSCC Board of Directors, which the Panel envisages as (consistent with the general thrust of this Report) an independent and

stakeholder driven body. In the Panel's view, the stakeholder Board will be best able to decide how resources are directed or expended and what the system's priorities and benchmarks should be over time. It is the members of the Board of Directors who have ongoing accountability to their respective stakeholder communities.

The back-to-work activity comparison is discussed in the Claims Process/Health Care Delivery section of the Report.

Coverage and Benefits - Recommendations

25. *The Independent Review Panel recommends that the Commission engage in consultations with the fishing industry to determine whether that industry should continue to be exempt from mandatory coverage. Any extension of coverage should only occur after employers and workers in this industry have had a full and free opportunity for consultation with the WHSCC.*

26. *The Independent Review Panel recommends that the Commission be proactive in promoting the availability of voluntary coverage for small employers.*

27. *The Independent Review Panel recommends the WHSCC give timely consideration to alternatives to benefit changes including:*

    - *A reduction of the waiting period to two days and a reimbursement of the two-day wait after 10 days on claim; and*
    - *The establishment of rules for compensation of injured workers for the day of an injury provided the worker reports the injury that day.*

28. *The Independent Review Panel recommends all options for benefit change by the WHSCC be consistent with the goal of maintaining a stable assessment rate and fully funded liability.*

29. *The Independent Review Panel recommends the Commission adopt policies or procedures including periodic follow-up reviews, to confirm any estimated earning capacities for individual injured workers are realistic, reasonable, achievable, and supported by information that justifies the estimation.*

30. *The Independent Review Panel recommends the WHSCC evaluate whether the current five percent annuity level is adequate to achieve the original general purpose identified as an offset for potential deficits in the Canada Pension Plan and/or employer sponsored contributions at age 65 when wage loss benefits cease.*

31. *The Independent Review Panel recommends the WHSCC review its policy on the level of annuity payments that may be paid as a lump sum.*

Claims Process/Health Care Delivery

The Independent Review Panel was asked to assess how well does the New Brunswick Workplace Health, Safety and Compensation Commission's relationship with health care and income support providers compare to the relationships held by other Canadian workplace health, safety and compensation groups and their providers. As well, under the mandate question on coverage and benefits, the Panel was asked how well the WHSCC compared in back to work activities.

The workers' compensation system operates outside the *Canada Health Act,* but relies on the provincial health care system for access to service. Delivery of these services is through the public health care system, either through public physicians or public hospitals.

Workers' Compensation Boards in New Brunswick, Alberta, British Columbia, and Manitoba permit the injured worker to select a family physician rather than from Workers' Compensation Board approved provider. In all jurisdictions, hospital physician visits are charged at a higher rate than office visits.

All jurisdictions determine with their physician groups, whether a service should be paid under a fee-for-service plan payment or an alternative payment plan.

In New Brunswick, the Commission pays the same for in-patient or out-patient per diem rates for treatment and services provided by hospital facilities as other users of the provincial health care system. This is similar to other jurisdictions in Canada.

The types of return to work programs vary across jurisdictions. Alberta appears to be the only other jurisdiction that offers a multidisciplinary program approach similar to the one offered at the Workers' Rehabilitation Centre in New Brunswick - a dedicated rehabilitation facility for occupational injuries.

The Independent Review Panel recognizes that claim duration is increasing which directly impacts the overall cost of claims, including the health care component. Accessing health care continues to be a challenge for all jurisdictions. Overall waiting time between visiting a general practitioner and receiving treatment in New Brunswick is 25.2 weeks, among the longest in Canada.

Access to timely health care and rehabilitation services remain a challenge both inside and outside the workers' compensation system. Nonetheless, the Panel believes that opportunity exists for the Workplace Health, Safety and Compensation Commission to overcome some of these barriers through creative arrangements.

Claims Process/Health Care Delivery - Recommendations

32. *The Independent Review Panel recommends the WHSCC direct a thorough study of the current legislative definition provisions for benefits entitlement to determine the impact of the "in the absence of any evidence to the contrary" standard.*

33. *The Independent Review Panel recommends a comprehensive review of case management policies, processes, and a restructuring of resources to ensure reasonable caseloads to permit WHSCC staff to provide timely and effective transition services to workers and their families.*

34. *The Independent Review Panel recommends the Commission provide ongoing client service training including specific training in the handling of difficult communications with injured workers.*

35. *The Independent Review Panel recommends the Commission offer mediation when the client/case manager relation becomes dysfunctional.*

36. *The Independent Review Panel recommends the WHSCC establish an ongoing awareness and educational campaign for both workers and employers directed to ensure both parties know and understand their claims reporting responsibilities and rights.*

37. *The Independent Review Panel recommends that once the Form 67 pilot project with pilot employers has been completed and assessed, the electronic version should be available on the WHSCC website for all employers and workers to access. Furthermore, technical assistance should be available to those who are not fully conversant with the use of computers to assist with completing the form.*

38. *The Independent Review Panel recommends the WHSCC undertake a process to maximize efforts to ensure the time to first payment for new lost-time claims is at a minimum.*

39. *The Independent Review Panel recommends the following principle be added to the Commission's goals when developing a re-employment plan: "Retraining for current jobs that are suitable and reasonably available."*

40. *The Independent Review Panel recommends the WHSCC encourage stakeholders to establish joint return to work committees in the workplace.*

41. *The Independent Review Panel recommends that WHSCC direct an information/education process as to the rights and responsibilities of employers and workers, as well as the enforcement of responsibilities regarding the re-employment obligation.*

42. *The Independent Review Panel recommends the legislation to be clarified to confirm that the return to work provisions in the Act do not relieve employers, unions, and workers from fulfilling their obligations regarding accommodation and return to work as required by the Human Rights Code.*

43. *The Independent Review Panel recommends that when communication between workplace parties ceases, or if workplace parties are not cooperating in a re-employment process, the Commission may implement third party mediation to help workplace parties find a resolution.*

44. *The Independent Review Panel recommends developing return to work incentives for smaller employers.*

45. *The Independent Review Panel recommends the Commission engage in a process to establish new arrangements and partnerships with facilities within the provincial health care system to facilitate timely medical diagnosis, treatment, and rehabilitation throughout New Brunswick.*

46. *The Independent Review Panel recommends that government remove barriers that impede such arrangements and partnerships without affecting the integrity of the current public health system.*

47. *The Independent Review Panel recommends the Board of Directors explore options to enhance or expand services offered at the Workers' Rehabilitation Centre with increased medical/specialist involvement.*

48. *The Independent Review Panel recommends a "value for money" audit be undertaken to determine if services could be more cost effectively provided or expanded at the Workers' Rehabilitation Centre.*

Appeals Tribunal

The Independent Review Panel was asked to assess how well the New Brunswick workplace health, safety and compensation appeals system compares in terms of processes, cost, and efficiency.

New Brunswick's Appeals Tribunal is a unique hybrid model. The Independent Review Panel considers the current structure appropriate and believes it important to maintain the independence of the Appeals Tribunal and members. It is the process of appeals which needs to be changed.

There currently is no preliminary review mechanism for decisions under the *Workers' Compensation Act*. The Panel believes this has contributed to what it sees as a considerable backlog in the number of appeals to be heard, resulting in unacceptable time delays and the Panel's consequent recommendation for a preliminary review process.

The thrust of the Independent Review Panel's recommendations is to create mechanisms intended to decrease the number of appeals and streamline the appeals processes both for the appellants and advocates.

The Panel is satisfied that the recommendations to modify the appeals processes, establish a new review mechanism, and enhance involvement of the Workers' Advocates at an earlier stage, will assist with establishing a more efficient and timely appeals process.

Overall costs of external appeals bodies and administration costs per decided appeal depend on a number of factors. This, taken with the hybrid structure of New Brunswick's appeal system makes it difficult to determine how well we compare cost-wise to other Canadian jurisdictions.

Appeals Tribunal – Recommendations

49. *The Independent Review Panel recommends a formal process be developed by WHSCC relating to the nomination of the Chairperson of the Appeals Tribunal in consultation with stakeholders.*

50. *The Independent Review Panel recommends a formal process be developed by WHSCC relating to the nomination of the Vice - chairs of the Appeals Tribunal in consultation with stakeholders.*

51. *The Independent Review Panel recommends terms for Appeals Tribunal Vice-chairs and members be extended to four years.*

52. *The Independent Review Panel recommends that upon the filing of an appeal, the Appeals Tribunal would be obliged to notify the Commission of the appeal. The Commission would then be required to review its decision and either confirm, vary, or reverse the decision, with written explanation based on policy. This explanation would be provided to the Appeals Tribunal and the appellant within 30 days of being notified of an appeal.*

53. *The Independent Review Panel recommends the Appeals Tribunal review its processes and timelines and articulate specific benchmarks (service standards) from receipt of appeal, to hearing of an appeal, to a written decision.*

54. *The Independent Review Panel recommends the development of a process to prescreen appeals, based on the notion that not all appeals require a full oral hearing. The Chair of the Appeals Tribunal would determine whether or not an appeal needs a full oral hearing or a hearing by a single Chair/Vice-chair on the basis of the record.*

55. *The Independent Review Panel recommends a statutory right of appeal to the Court of Appeal be maintained in the legislation, but that the current procedure for appeal be reviewed.*

56. *The Independent Review Panel recommends that the Workers' Advocates mandate and job description be revisited in light of the Panel's recommendations.*

57. *The Independent Review Panel recommends that Workers' and Employers' Advocates have electronic access to WHSCC files from secure terminals, not only terminals located in WHSCC regional offices.*

58. *The Independent Review Panel recommends remuneration of the Appeals Tribunal positions be regularly reviewed to ensure per diem rates are competitive.*

Financial Performance

The Independent Review Panel was asked to assess how well does the New Brunswick Workplace Health, Safety and Compensation Commission compare to other Canadian jurisdictions in terms of financial performance, including the degree of security for benefits offered, stability of assessment rates, and governance of the financial management.

It is fair to say that the Workplace Health, Safety and Compensation Commission's financial performance has been superior over the past number of years and has resulted in a situation where benefits are secure, unlike some other jurisdictions that remain in an unfunded liability situation.

Assessment rates have decreased since 2004 and are the lowest in Atlantic Canada. The surcharge on the assessment rates for "target funding level" and the reduction in benefits in 1993 have assisted in achieving the degree of financial security the Commission currently enjoys.

In 2006, the Commission had a particularly positive financial performance. However, there is no guarantee this will repeat itself and the Board of Directors must continue to be fiscally prudent. The Board must be mindful of economic and other factors that impact the assessment revenue stream, market conditions affecting investment performance, as well as the other risks associated with managing the system. In 2005, assessments were 59.92 percent of revenue with investments contributing a significant percentage of the revenue stream - 26.75 percent. In 2006, there was a decrease in assessment revenue to 52.56 percent with investment income increasing to 36.96 percent.

During the consultations, the Independent Review Panel heard from certain stakeholders that the Commission should take a more aggressive and active approach in managing its investment portfolio. The WHSCC has consistently performed below the Canadian average market rate of return from 2001 to 2005. Now that the Commission is fully funded and indeed, has a surplus, the Panel suggests it should review, through the recommended Investment Committee, its investment approach to ensure the Commission's financial objectives remain suitable.

The Independent Review Panel believes it is important to have a competitive workplace health, safety and compensation system. It must be fully funded with security of benefits and the lowest possible assessment rates in Atlantic Canada.

Financial Performance - Recommendations

59. *The Independent Review Panel recommends that Government as a self-assessed employer, study the benefits of being rate assessed.*

60. *The Independent Review Panel recommends the WHSCC, through its rate structure, should provide incentives to employers that have implemented*

successful prevention and return-to-work initiatives, including those developed through accreditation programs.

61. *The Independent Review Panel recommends Government should address the question as to whether the costs of compliance as currently undertaken by the WHSCC, be borne by the general revenues of the Province of New Brunswick.*

62. *The Independent Review Panel recommends the principles of workers compensation established in the Meredith Report, including Security of Payment, should continue to guide the delivery and administration of workers compensation in New Brunswick.*

63. *The Independent Review Panel recommends the WHSCC maintain the goal of having the lowest average assessment rates in Atlantic Canada and be competitive with other Canadian jurisdictions.*

64. *The Independent Review Panel recommends that WHSCC maintain the 110 percent funding goal set out in policy, as a reasonable funding level in managing the system.*

Mandate

On May 24, 2007, the Government of New Brunswick commissioned an independent review of the Workplace Health, Safety and Compensation Commission (WHSCC). It has been almost 25 years since a formal review of New Brunswick's workplace health, safety and compensation system has taken place.

The Independent Review Panel (the Panel) comprised three individuals:

- Louis R. Comeau, Chair of the Independent Review Panel (corporate director and consultant and past chair, among other organizations, of the Nova Scotia Workers' Compensation Board);
- Robert D. Breen, Representative of Workers (founding partner in the law firm Pink, Breen and Larkin in Fredericton); and
- James F. LeMesurier, Representative of Employers (partner in the Atlantic Canada law firm Stewart McKelvey based in Saint John).

In order to determine whether the workplace health, safety and compensation system is functioning appropriately and to its fullest potential, consideration must be given to what a New Brunswick worker faces when an injury occurs. To address this, two questions emerged:

1. Is the workplace health, safety and compensation system adequate compared to its Canadian counterparts?
2. Does the Workplace Health, Safety and Compensation Commission provide appropriate coverage within the New Brunswick economic and social context?

The Independent Review Panel's full mandate is set out in Appendix 1. The Panel was asked to address, at the minimum, the following questions:

I. How well does the Workplace Health Safety and Compensation Commission's legislated scope of coverage compare to other Canadian jurisdictions, including: number of workers covered; benefits offered to injured workers; treatment of workers while on benefits, and back-to-work activity reports?
II. How well does the Workplace Health Safety and Compensation Commission compare to other Canadian jurisdictions in terms of financial performance, including the degree of security for benefits offered; stability of assessment rates, and governance of the financial management?
III. How well does the Workplace Health, Safety and Compensation Commission address prevention of injuries, including occupational health and safety education; resources allocated to education, and results achieved, such as measures of accident frequency?
IV. How well does the Workplace Health, Safety and Compensation Commission compare to other Canadian jurisdictions in terms of the structure of the board of governance, policy development and foresight, and stakeholder input?
V. How well does the New Brunswick workplace health, safety and compensation appeal system compare in terms of processes, cost and efficiency?
VI. How well does the New Brunswick Workplace Health, Safety and Compensation Commission's relationship with healthcare and income support providers compare to the relationships held by other Canadian workplace health, safety and compensation groups and their providers?

Review Process

Although mandated to conduct targeted stakeholder consultations, the Independent Review Panel made significant effort to involve all New Brunswickers in this important review of New Brunswick's workplace health, safety and compensation system.

The Panel held an initial meeting in June with employer and worker stakeholder organizations. The Panel also met with members of the Board of Directors, staff of the Workplace Health, Safety and Compensation Commission, the Chair and staff of the Appeals Tribunal, the WHSCC's consulting actuary, and various officials within the Department of Post-Secondary Education, Training and Labour.

Over the summer, extensive research was undertaken and information was provided by the various Workers' Compensation Boards across Canada, the WHSCC, the Appeals Tribunal, Department of Post-Secondary Education, Training and Labour, and other government departments.

By the first part of October, a series of six discussion papers providing factual analyses of the six topic areas in our mandate were posted on the Independent Review Panel's website - http://www.gnb.ca/IRP-CRI/index-e.asp. The discussion paper topics were: Coverage and Benefits; Financial Performance; Prevention of Injuries; Governance/Structure; Appeals System; and Claims Process/Health Care Delivery.

Through advertisements in all the provincial daily newspapers and some of the weekly papers, the public and stakeholders were invited to submit their experiences, views/briefs on the discussion papers or other issues of interest to them. As well, letters were sent to more than 100 stakeholders, as well as members of the Legislative Assembly, inviting them to submit their thoughts on how to improve or strengthen the Province's workers' compensation system.

During the month of November, the Independent Review Panel held nine stakeholder meetings and five public consultations throughout the Province:

November 5, 2007	Edmundston - Château Edmundston
November 6, 2007	Fredericton – Wu Centre
November 7, 2007	Saint John – Delta Brunswick
November 21, 2007	Bathurst – Atlantic Host Inn and Conference Centre
November 22, 2007	Moncton – Future Inns

The public consultations were attended by more than 150 people with 52 individuals representing injured workers and stakeholder groups giving presentations.

The Panel received 75 submissions (31 briefs and 44 comments) from a spectrum of stakeholder groups including employer organizations, worker organizations, non-profit organizations, service providers, injured workers, and government.

Details of stakeholder and public consultation participants are found in Appendix 2. These, as well as the briefs and the majority of comments (email and paper) received may be viewed on-line at: http://www.gnb.ca/IRP-CRI/comments-e.asp

Background

The concept of modern workers' compensation had its origins in Germany, Great Britain and the United States during the late 1800's and early 1900's. In Canada, workers' compensation had its beginnings in the Province of Ontario when Chief Justice William Meredith was appointed to a Royal Commission to study workers' compensation in 1910.

The Meredith Report outlined a trade-off in which workers' relinquish their right to sue in exchange for compensation benefits. Meredith advocated for no-fault insurance, collective liability, independent administration and exclusive jurisdiction.[1]

There were five basic cornerstones to the original workers' compensation laws known as the 'Meredith Principles'; cornerstones which have survived, to a greater or lesser extent, as follows:

1. **No-fault compensation:** Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.
2. **Collective liability:** The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
3. **Security of payment:** A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.
4. **Exclusive jurisdiction:** All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims. The board is not bound by legal precedent; it has the power and authority to judge each case on its individual merits.
5. **Independent board:** The governing board is both autonomous and non-political. The board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its employer and worker clients, providing service with efficiency and impartiality.[2]

Chief Justice William Meredith pointed out that the division of the burden between employee and employer included the following:

> In order that it may be seen whether the division of the burden between the employer and workman is unfair, it may be well to point out how it will be divided under the provisions of the proposed law. The workman will bear (1) the loss of all his wages for seven days if his disability does not last longer than that, (2) the pain and suffering consequent upon his injury, (3) his outlay for medical or surgical treatment, nursing and other necessaries, (4) the loss of 45 per cent of his wages while his disability lasts; and if his injury results in his being maimed or disfigured he must go through life bearing that burden also, while all that the employer will bear will be the payment

[1] http://www.awcbc.org/en/historyofworkerscompensation.asp
[2] Ibid

> of 55 per cent of the injured workman's wages while the disability lasts.[3]

The first *Workmen's Compensation Act* in New Brunswick received Royal Assent in 1918, the result of a report prepared by a commission chaired by Frederick J.G. Knowlton "to enquire into and report upon the applicability...of the Ontario and Nova Scotia Compensation Acts."[4]

The basic structural framework and principles set out in the Meredith Report remain intact. It is a collective liability insurance system that is designed to offer employers protection from individual responsibility for wage losses due to job-related injuries or disease and provide workers with automatic benefits if injured at work. Over the years, the scope and coverage of workers compensation legislation gradually expanded to include a greater percentage of the labour force as well as to increase maximum insurable earnings and percentage of wages paid.

There was also expansion of services in the field of medical aid, rehabilitation and retraining. While the concept of social responsibility for social problems emerged in the 1950s and 1960s, workers compensation maintained an essentially private relationship between worker and employer, mediated and for all practical purposes, administered by an agency of the State – the Workers' Compensation Board.

It was during the 1970's and 1980's that the Canadian systems moved from awarding benefits according to loss of body part or function to a wage-loss system. It was recommendations from the 1980 Boudreau Report that helped establish the current system in New Brunswick. This was based on wage-loss security that would maintain the individual's income after injury in the same ratio to the Industrial Composite as the injured worker was receiving prior to the injury and/or subsequent re-occurrence.

The Woods Gordon Report of 1988 also suggested a number of recommendations, particularly addressing the organization of the WHSCC. Further recommendations and reports on governance followed in 1994 and 2006.

With the change to a workers' compensation system based on wage-loss security, most jurisdictions underestimated the cost of benefits, including New Brunswick, resulting in large unfunded liabilities. In 1985, New Brunswick had an unfunded liability of $50 million and it was projected to be more than $100 million by 1992.

To address this perceived crisis, a joint labour-management committee was established to make recommendations on how to save the system from possible collapse. The 1993 changes included:

- Reducing wage recovery from 90 percent of average net earnings to 80 percent;
- Effectively preventing employers from "topping-up" compensation benefits; and
- Introducing a three-day waiting period (reimbursable after 30 days on claim).

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[3] Final Report on Laws Relating to the Liability of Employers to Make Compensation to their Employees for Injuries Received in the Course of their Employment Which Are In Force in Other Countries, and As To How Far Such Laws are Found to Work Satisfactorily, Legislative Assembly of Ontario, Toronto, October 31, 1913, p. 16 – known as the Meredith Report.
[4] Boudreau report "Report of the Workers' Compensation Study Committee", February 1980, p. 10.

In 1996, the WHSCC established a second joint committee to examine the service benefits and assessment issues facing the Commission as it approached fiscal stability. It was at the end of 1996 that the Commission moved from having an unfunded liability to being fully funded at 101 percent. As of December 31, 2006, the WHSCC was fully funded at 111 percent.

The following changes to the New Brunswick system in 1998 were a result of recommendations from the second joint committee:

- Increasing wage recovery from 80 percent of average net earnings to 85 percent;
- Removing the three-day waiting period when an injured worker is hospitalized and where the injury is recurrent; and
- Reimbursing the three-day waiting period to workers having more than 20 days on claim.

Today, the WHSCC ("Commission") is a Crown Corporation that oversees the implementation and application of three Acts on behalf of the workers and employers of New Brunswick: the New Brunswick *Occupational Health and Safety Act*, the *Workers' Compensation Act* of New Brunswick, and the *Workplace Health, Safety and Compensation Commission Act* of New Brunswick. The Commission administers no-fault workplace accident and disability insurance, as well as comprehensive accident prevention, health and safety initiatives for employers and their workers.

In addition to administering the three *Acts*, the legislation prescribes further roles and responsibilities to:

(a) advance the principle that every worker is entitled to a safe and healthy work environment;
(b) promote an understanding of, acceptance of and compliance with this *Act*, the *Workers' Compensation Act* and the *Occupational Health and Safety Act*;
(c) develop and conduct educational programs designed to promote an awareness of occupational health and safety;
(d) undertake research on matters related to workers' health, safety and compensation;
(e) advise the Minister on developments in the field of workers' health, safety and compensation principles in other jurisdictions;
(f) propose legislation, policies and practices to promote workers' health, safety and compensation;
(g) recommend changes in this Act, the *Workers' Compensation Act*, the *Occupational Health and Safety Act*, and the regulations, in order to promote better service by the Commission; and
(h) publish from time to time such reports, studies and recommendations as the Commission considers advisable.[5]

Appeals System

From its inception in 1918 when the first *Workmen's Compensation Act* in New Brunswick received Royal Assent, there has been an appeals process.

[5] Workplace Health, Safety and Compensation Act, Chapter W-14, Section 7.

The 1980 Boudreau Report discussed a number of issues regarding the appeals system including, the conflicting roles of the appeals staff being responsible for the original decision and the appeal hearing. The Report aimed to establish an internal adjudication/appeals system and made recommendations describing powers of adjudication officers.

Until 1988, it was the Workers' Compensation Board composed of three appointed full-time members that addressed appeals: the Chair, Vice-chair, and Commissioner.

The 1988 Woods Gordon Report made a number of recommendations to address the organization of the WHSCC including a three-level appeals process.

> In addition to the Appeals Board coming on line as the third and final level, the Review Committee (second level of appeal) was also introduced to the appeals process, as well as a first level departmental review.[6]

In 1991, a task force composed of staff members, recommended the appeals process be restructured to provide a re-examination of the original decision upon the presentation of new evidence, followed by an appeal to the Appeals Board.

The current Appeals Tribunal was established in September 1994 under the *Workplace Health, Safety and Compensation Commission Act* when the Workers' Compensation Board and the Occupational Health and Safety Commission merged.

The Appeals Tribunal functions as an administrative, quasi-judicial, body which reviews decisions made by the WHSCC at the request of unsatisfied clients – workers and employers.

There have been no changes to the appeals system legislation since 1994. However, the 2006 Wilson Governance Review produced recommendations including:

- Appointment of Chairperson of the Appeals Tribunal;
- Appointment/Reappointment of Vice-chairpersons of Appeals Tribunal;
- Appointment of Members of Appeals Tribunal; and
- Claims resolutions and Appeals process.

[6] Information provided by the Appeals Tribunal, p. 2.

The Independent Review Panel's Perspective on New Brunswick's Workplace Health, Safety and Compensation System

The Independent Review Panel believes that although almost a century old and with a workplace that has changed significantly, the original Meredith Principles are still valid. The Panel heard from both employers and workers who reiterated this belief. The Panel especially believes in the principle of an independent board, a system overseen by stakeholders, for the stakeholders with minimal government intervention.

Not all parts of today's workers' compensation systems are specifically addressed by the Meredith Principles, such as the prevention of injuries and occupational diseases. These principles need to be augmented to reflect the realties of today and the challenges of tomorrow. Workers' Compensation Boards are shifting their focus and culture to prevention of injuries and occupational diseases through education and training. However, workplace health and safety is a shared responsibility between employers, workers and government and the Internal Responsibility System plays a key role.

New Brunswickers deserve a modern system positioned to meet the challenges of the modern workplace. Rather than the predominately industrialized economy of the past, we are moving toward a knowledge-based society that includes health care systems, information technology, and other innovative industries. Occupational diseases, social changes, aging demographics, and new technological innovations all represent new challenges to workers' compensation programs. Meeting the requirements of the new economy necessitates continually assessing and identifying practical solutions to maintain a modern workplace health, safety and compensation system.

The Independent Review Panel has heard many different points of view from stakeholders and New Brunswickers about the workplace health, safety and compensation system. However, a consistent theme was to have the best possible benefits, while maintaining the lowest assessment rates possible.

The Panel's approach has been to objectively assess and identify opportunities for improvement in all aspects of the mandate including: governance/structure; prevention of injuries; coverage and benefits; claims process/health care delivery; appeals tribunal; and financial performance. The Panel's observations and recommendations, where possible, are based on trends rather than any one specific year and by costing considerations and commentary provided to the Panel by Morneau Sobeco (see Appendix 3 for Report on Certain Coverage, Benefit Provisions and Operational Aspects of the Current System).

Given the time and scope of the mandate, the Independent Review Panel focused on structural issues that the Panel envisions standing the test of time as New Brunswick moves forward in the 21st century.

Finally, the Independent Review Panel reemphasizes its view that a stakeholder driven Board of Directors, representative of employer, worker, and public

stakeholder groups, is best situated to make decisions on priorities and benchmarks for the system and the allocation of its resources.

GOVERNANCE/STRUCTURE

How well does the Workplace Health, Safety and Compensation Commission compare to other Canadian jurisdictions in terms of the structure of the Board of governance, policy development and foresight, and stakeholder input?

Governance / Structure

This section discusses the governance/structure of New Brunswick's Workplace Health, Safety and Compensation Commission, the mandate question of the Independent Review Panel's Terms of Reference - How well does the Workplace Health, Safety and Compensation Commission (WHSCC) compare to other Canadian jurisdictions in terms of: the structure of the Board of governance; policy development and foresight; and stakeholder input?

Background

Governance is about providing direction and a structure for accountability, resulting in better and more effective management.

> The word 'governance' often refers to the Board's activities to oversee the purpose, plans and policies of the overall organization, such as establishing those overall plans and policies, supervision of the CEO, ensuring sufficient resources for the organization, ensuring compliance to rules and regulations, representing the organization to external stakeholders, etc.[1]

...Meredith Principles ... the workers' compensation system should be governed by an autonomous Board...

One of the original Meredith Principles was that the workers' compensation system should be governed by an autonomous Board:

> The governing Board is both autonomous and non-political. The Board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its employer and worker clients, providing service with efficiency and impartiality.[2]

The first *Workmen's Compensation Act* in New Brunswick received royal assent in 1918. It established the first Workmen's Compensation Board in New Brunswick.

The 1980 Boudreau Report made a number of governance recommendations to refine the roles of the then three-member Board including the need to provide for management succession, with the opportunity for the replacement member to have a minimum of three months to understudy the position of the out-going Board member, as well as to develop a public information program "designed to heighten awareness of its functions and services and to provide the reasoning behind its decisions"[3].

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[1] Free Management Library: http://www.managementhelp.org/Boards/Boards.htm#anchor97797
[2] The Association of Workers' Compensation Boards of Canada (AWCBC) website: http://www.awcbc.org/en/historyofworkerscompensation.asp
[3] Boudreau Report "Report of the Workers' Compensation Study Committee", February 1980, p. 38.

Similarly, the Woods Gordon Report of 1988 made a number of recommendations to address the governance of the WHSCC including the number of Directors reporting to the Executive Director, establishment of subcommittees of the Board such as an audit committee, human resources committee, and executive committee to review certain critical areas.

In 1994, a Ministerial Committee was asked to bring forward recommendations for the merger of the Workers' Compensation Board and the Occupational Health and Safety Commission with the intent these would be the foundation of the new corporate Board. The Ministerial Report recommended a corporate Board composed of a part-time Chair, three part-time representatives of employees, as well as three for employers, a full-time President and Chief Executive Officer, and a part-time "member representative of the general public, who shall be a medical doctor with experience in the field of work related injuries"[4] with ability being the prime requirement for selection. A Vice-President of the Appeals Tribunal, who is also the Chair of the Tribunal, would report directly to the corporate Board on all appeal matters.

Daryl Wilson, former Auditor General of New Brunswick, made a number of recommendations to improve the governance process in his 2006 Governance Review. These included clearly setting out the roles and responsibilities (description of positions) of all members of the Board of Directors; identification and selection of candidates for the Board including a process for selecting the next President and CEO; training and orientation of new Board members; annual evaluation of Board members' performances; clarifying and strengthening the role of the Internal Auditor; and amending the Terms of Reference of the Financial Services Evaluation Committee to clearly articulate its responsibility for the "audit committee" functions.

The Board of Directors endorsed all the recommendations in Wilson's Governance Review, most of which were incorporated into a draft Memorandum of Understanding (MOU) with the Department of Post-Secondary Education, Training and Labour (PETL).

[4] The Ministerial Report - Recommended Structure for the New Brunswick Health, Safety and Compensation Board, September 19, 1994, p. 4.

What We Heard

The Independent Review Panel heard various and sometimes opposing points of view during the consultation process about governance of the WHSCC. Some wanted a return to a separate Occupational Health and Safety Commission, others did not.

Many wanted an increase in the number of employer and worker representatives on the Board of Directors. The Panel heard that there was not a need for the public representative. Some voiced maintaining the Chair of the Appeals Tribunal as a non-voting member of the Board of Directors, whereas others disagreed.

Other views expressed about the composition of the Board of Directors: having at least one worker representative from a non-unionized background; having an injured worker on the Board of Directors; considering gender balance when appointing Board members; and appointing a senior safety professional from the community.

There was broad consensus about the need to increase appointment terms and to stagger the appointments. There were views that member nominations should be obtained through provincially or nationally recognized groups or associations.

Of major concern was the need for a formal consultation process with appropriate response times to ensure interested stakeholders would have the opportunity to participate in the policy renewal process.

New Brunswick Situation

The Workplace Health, Safety and Compensation Commission of New Brunswick is a Crown Corporation that oversees the implementation and application of three Acts on behalf of the workers and employers of New Brunswick: the New Brunswick *Occupational Health and Safety Act*, the *Workers' Compensation Act* of New Brunswick, and the *Workplace Health, Safety and Compensation Commission Act* of New Brunswick.

The structure of the Board of Directors is legislated under the *Workplace Health, Safety and Compensation Commission Act* of New Brunswick, 1994. The legislation establishes the Commission and its responsibilities, the appointment and terms of the Board of Directors, roles and responsibilities and the reporting structure – in short, the governance of the Commission.

Composition and Size of the Board of Directors

The composition and size of the Board of Directors should ensure an appropriate mix and level of expertise both at the Board table and to sit on the various Board committees.

The composition and size of the Board of Directors should ensure there is an appropriate mix and level of expertise...

A number of jurisdictions have several members representing the general public, while other jurisdictions' legislation does not make any reference to a public representative. New Brunswick has one public member in addition to the Chair.

In 2006, Board membership across Canada ranged from five to sixteen members. Currently in New Brunswick there are nine Board members in addition to the Chair, with time commitments estimated to be 30 to 45 days per member.

Two other jurisdictions besides New Brunswick are legislated to have the Chair of the appeal review body as part of the Board of Directors' composition - British Columbia and Yukon.

Summary of Composition of Board as stated in legislation

	Worker Reps	Employer Reps	General Public Rep	President & CEO	Chief/Chair of Appeals	Others
AB	Chair					
	3	3	3	Yes	-	-
BC	Chair					
	1	1	4	Yes	Yes	-
MB	Chairperson					
	3	3	3	Yes	-	-
NB	Chairperson					
	3	3	1	Yes	Yes	-
NL	Chairperson					
	3	3	3	Yes	-	1 ex-officio
NT/NU	Chairperson					
	2	2	2	Yes	-	-
NS	Chair					
	4	4	-	Yes	-	Deputy Chair
ON	Chair					
	7 - 9 members			Yes	-	-
PE	Chairperson					
	3	3	-	-	-	-
QC	Chairman					
	7	7	-	-	-	1 observer
SK	Chairperson					
	2	2	-	-	-	-
YT	Chair					
	2 to 3	2 to 3	-	Yes	Yes	-

Source: AWCBC 2007

Although worker representatives on the Board of Directors in New Brunswick are appointed as representatives of all workers, the members are currently drawn from the unionized workforce.

According to Statistics Canada, in New Brunswick in 2006 there were 313,100 employees and of those 87,900 (28 percent) had union coverage while 225,300 (72 percent) did not (see following table).

Percentage of Unionized and Non-Unionized workers in Canada

	Total employees	Total Unionized	Non-Unionized	Unionized	Non-Unionized
		(in thousands)		(%)	
NL	188.1	70.3	117.8	37.4%	62.6%
PE	57.8	17.1	40.7	29.6%	70.4%
NS	388.6	109.8	278.8	28.3%	71.7%
NB	313.1	87.9	225.3	28.1%	72.0%
QC	3262.9	1312.3	1950.7	40.2%	59.8%
ON	5557.8	1557.3	4000.6	28.0%	72.0%
MB	500.6	184.6	316	36.9%	63.1%
SK	395.6	142.3	253.3	36.0%	64.0%
AB	1539.9	379	1161	24.6%	75.4%
BC	1781.8	568.1	1213.6	31.9%	68.1%
CA	**13986.3**	**4428.6**	**9557.7**	**31.7%**	**68.3%**

Source: Statistics Canada Labour Force Survey: 2006 Annual Averages.

Discussion of Key Issues

During the consultation process the Independent Review Panel heard there should be at least one worker representative on the Board from non-unionized or injured workers. The Panel believes that this issue should be further considered. The Panel also believes the WHSCC should explore the development of a nomination process to put forth names to government from non-unionized workers and injured workers to sit as one of the worker representative appointments to the Board.

The Board's composition should ensure a range of stakeholder insights that promote balance in the interests of all stakeholders and enables full discussion and informed decisions that work to protect and enhance New Brunswick's workplace health, safety and compensation system. The Independent Review Panel has concluded that to ensure this range of stakeholder insights and given the time constraints and the need for participation on various committees, additional Board members are required. The Panel considers four employer and four worker representatives sufficient. The Panel did not hear the need for more during the consultation process and would not wish the size of

the Board to become unwieldy. Four of both stakeholder groups (employer and worker) enables and supports the current consensus decision-making model. In order to provide for succession planning, the Panel also sees the benefit of a Vice-chair as part of the compositon of the Board of Directors.

There was no suggestion during the consultation process that the current role of the President and CEO as a non-voting member of the Board of Directors should be changed. This is consistent with the Panel's research, eight other jurisdictions have the President and CEO as a member of the Board. The Panel sees no reason to deviate from this.

However, the Independent Review Panel heard pros and cons about the Chair of the Appeals Tribunal being a non-voting member of the Board of Directors.

The Independent Review Panel believes the Chair of the Appeals Tribunal provides a unique perspective to the Board of Directors when formulating policy. Not only does the Chair provide valuable input as to the application of policy in an adjudicative setting, but in participating on the Board is better able to understand the thinking and rationale behind the Board of Directors' formulation of policy. This is beneficial in the application and interpretation of policy to all Appeals Tribunal members when hearing appeals. For these reasons, the Independent Review Panel considers that the Chair of the Appeals Tribunal should continue to be a non-voting member of the Board of Directors.

The Panel considers that for the system to be effective the **Board of Directors must be stakeholder driven**. The primary stakeholders are employers, who pay assessments and are the primary source of revenue for the workers' compensation system and workers, who receive benefits if injured. It is also important that there is a public interest represented by Government.

...public interest...addressed by the independent appointment of the Chair...

Government's role is to ensure that the public interest is recognized by the appointment of the Chair, who mediates between the two interests – employers and workers. The Independent Review Panel believes the public interest is adequately addressed by the independent appointment of the Chair. Therefore, the Panel does not see the need for a further public appointment.

The Independent Review Panel heard from the Board of Directors that they have developed a consensus decision-making model consistent with the *Workplace Health, Safety and Compensation Commission Act* Section 8(4) that states:

> Members of the board of directors shall at all times act in the best interest of the Commission notwithstanding the appointment of a member representative of workers, employers or the general public.

The Independent Review Panel would encourage the continuation of the consensus decision-making model and the willingness of the Board members to accept the responsibility of acting in the best interests of the organization rather than in the interest of a particular stakeholder group. To facilitate this, the Panel has recommended the removal of the public member from the Board of Directors with the Chairperson representing government/public interest.

Recommendation #1

The Independent Review Panel recommends a new composition of the Board of Directors – a Chairperson, four employer and four worker representatives, as well as the President and CEO of the Commission and the Chair of the Appeals Tribunal, both as non-voting members. Consideration should also be given to a Vice-chair as part of succession planning for the Chair. As well, the Vice-chair would have specific responsibilities of chairing the Governance/Human Resources Committee recommended later in this section.

Recommendation #2

The Independent Review Panel recommends the elimination of the public member position from the Board of Directors.

Recommendation #3

The Independent Review Panel recommends the composition of the Board of Directors be representative of the various regions of New Brunswick and reflective of gender and diversity of all stakeholders of the Commission.

Appointments and Terms

Under New Brunswick's legislation, comparable to most other jurisdictions, the Lieutenant-Governor in Council (LGIC) on the recommendation of the Minister appoints the Board of Directors comprised of a Chairperson, three or more persons representative of workers, an equal number of persons representative of employers and one representative of the general public. The President and CEO of the Commission and the Chairperson of the Appeals Tribunal complete the Board.[5]

[5] *Workplace Health, Safety and Compensation Commission Act*, Sections 8(1), 9(1) -10(3); 20(1) and *Interpretation Act*, Sect 21(1).

	Appointment by LGIC or Government	Remuneration set by LGIC	Serves at pleasure of LGIC	Can be dismissed for cause	Vacancy can be filled for term of office	Remain in office, when term expires, until re-appointment or replaced
AB	Yes	Yes	-	Yes	-	No
BC	Yes	Yes	-	-	-	-
MB	Yes	Yes	-	-	-	Yes
NB	Yes	Yes	No	Yes	Yes	No
NL	Yes	Yes	-	-	-	Yes
NT/NU	Minister	Minister	Minister	-	Yes	No
NS	Yes	Yes	-	-	-	Yes, non-voting
ON	Yes	Yes	Yes	-	-	-
PE	Yes	Yes	-	Yes	Yes	-
QC	Yes	Gov't	-	-	Yes	Yes
SK	Yes	Yes	-	-	Yes	Yes
YT	Yes	No	No	Yes	1 term up to 60 days.	No

"-" means no reference found in Act.

Source: AWCBC – Appointment Factors for Board Members - 2006

Chair appointments vary across Canada from three to five years and are four years in New Brunswick. Member appointments vary from two to four years and are three years in New Brunswick (see following table).

Term: Number of years (up to)

	Chair	Vice Chair	Members	President and / or CEO	Additional term?	Number of years stated in Act
AB	3	-	3	Open	Yes	3
BC	5	-	3	Open	Yes	6/10*
MB	4	-	4	Open	Yes	4
NB	4	-	3	3	Yes	3
NL	-	-	Determined by LG	-	-	-
NT/NU	3	3	3	-	Yes	3
NS	5	5	4	-	Yes	-
ON	3	-	-	3	Yes	-
PE	3	-	3	-	Yes	-
QC	5	5	2	-	Yes	-
SK	5	-	4	-	Yes	-
YT	3	3	3	-	Yes	3 years by implication

* Chair may not be appointed for continuous period of more than 10 years. Director may not be appointed for continuous period of more than 6 years.

Source: Association of Worker's Compensation Boards of Canada (AWCBC) – 2006

DISCUSSION OF KEY ISSUES

The Independent Review Panel heard from various members of the Board of Directors that although the new orientation process for Board members was excellent, the learning curve was long and a longer term would be beneficial. As well, it was suggested the opportunity to shadow an outgoing member would provide for an easier transition.

Although the Independent Review Panel has been convinced that a longer term would be warranted, the Panel sees difficulties, logistically and practically, with the second thought.

One issue that was brought to the Independent Review Panel's attention relates to the replacement of a member of the Board of Directors whose term ends prematurely. The Panel understands that the person appointed as a replacement can complete that term, but is only eligible for one additional term. The result is that an abbreviated term is served with the premature and unnecessary loss of corporate memory.

A number of jurisdictions allow the members to remain in office when their term expires until re-appointment or replacement. In Nova Scotia, a member may, at the discretion of the Chair, act as a non-voting member of the Board of Directors in order to complete any duty or matter that arose before the expiry of the term of office.

Although the Independent Review Panel is advocating longer terms, it believes renewal and refreshment is important to the Board of Directors.

Recommendation #4

The Independent Review Panel recommends four year terms for the Chair and Board members which may be renewed once.

Recommendation #5

The Independent Review Panel recommends increased flexibility for appointments. Although the Act provides for staggered appointments for Board members it could also allow that if a replacement is appointed to a Board position, that person could be eligible to be re-appointed for two full terms, not just the remainder of the term appointment and one additional term.

Appointment Factors for Board Members

...nomination process driven by stakeholders...

Traditionally in New Brunswick, Government has informally sought the names of potential candidates from stakeholders, but has not always appointed from among the stakeholder nominees.

Discussion of Key Issues

The Independent Review Panel believes a more formal process for selection of Board members should be developed so that a number of names, not just one, are put forward by the stakeholders to Government, which has the responsibility to make the appointments. The names put forward should reflect the diversity of the stakeholders with the appropriate personal attributes and mix of personal competencies as mentioned below. No particular stakeholder should assume that it has entitlement to a permanent seat on the Board.

If unsatisfied with the names brought forward, Government should seek additional names from the stakeholder groups and not act independently. This process would not apply to the appointment of the Chair, which would remain the prerogative of Government. It is presumed Government would consult with stakeholders on potential candidates for Board members to ensure the trust and confidence in the candidate.

The Independent Review Panel supports the process for appointing the Chair of the Commission articulated in the January 2007 Memorandum of Understanding between the Workplace Health, Safety and Compensation Commission and the Department of Post-Secondary Education, Training and Labour. It is crucial that there is broad support and confidence in the Chair by the employer and worker communities.

It is crucial that there is broad support and confidence in the Chair by the employer and worker communities.

Given the Independent Review Panel's views on the independence of the WHSCC and that it should be by and for the stakeholders, the Panel had difficulty with the requirement that the President and CEO who is appointed by the Lieutenant-Governor in Council, is also "subject to approval" by the Lieutenant-Governor in Council.

The Board of Directors comprised of three stakeholders - workers, employers and an appointee of Government (the Chair) - should consider a process to recruit, select, and appoint the President and CEO. It is the role of the members of Board of Directors to keep their respective stakeholder constituencies apprised of the selection process.

Excellent corporate governance depends on having a Board of Directors with the appropriate personal attributes and mix of competencies that will support and advance the organization's mission. For example, Manitoba's WCB Board of Directors has developed a list of competencies that the Board should possess on a collective basis. The Minister responsible provides the list to stakeholders to assist them in their consideration and selection of individuals for nomination. (See Appendix 4 for Manitoba's Matrix of Competencies).

The Independent Review Panel understands there is currently a Legislative Review Committee whose mandate is to examine the

appointment process for Agencies, Boards, and Commissions. In the Panel's view, although Government has the power of appointment, WHSCC is different from other Agencies, Boards, and Commissions in that it is a stakeholder driven Board primarily funded through employer contributions and therefore should have responsibility for its appointment process.

Recommendation #6

The Independent Review Panel recommends the Board of Directors adopt a formal process to recruit, select, and appoint the President and CEO.

Recommendation #7

The Independent Review Panel recommends a formal process should be identified to select candidates for the Board of Directors.

Recommendation #8

The Independent Review Panel recommends the WHSCC develop a list of clearly defined competencies for the Board of Directors to ensure that individuals with the right skills are selected for nomination from the various stakeholder groups. It is expected the selection process be managed by the Board of Directors with the appointment by Government.

Committees of the Board of Directors

Most jurisdictions have separate audit and finance/investment committees. Many jurisdictions also have Board committees for governance, human resources, and policy (see following table). Much of the decision-making work of Boards is managed through committees. Committees can serve as an important mechanism for actively involving all Board members in the work of an organization by evaluating issues and making recommendations for the Board of Directors' approval.

New Brunswick is the only jurisdiction with a specific committee that reviews fatalities.

	Audit	Finance / Investment	Governance	HR and Compensation	Policy	Others
AB	Yes	Yes	Yes	Yes	Yes	
BC	Yes		Yes	Yes		
MB	Yes	Yes	Yes	Yes	Yes	
NB		Financial Services Evaluation				WorkSafe Services Evaluation; Fatality Review
NL	Yes	Yes				

	Audit	Finance / Investment	Governance	HR and Compensation	Policy	Others
/NU		Yes			Yes	Oversight
NS	Yes	Yes	Yes	Yes		System Goals Advisory
ON	Yes	Yes	Yes	Yes	Yes	Health and Safety
PE						Board only - no committees
QC	Yes	Yes			Yes	10 additional committees
SK	Yes	Yes				
YT	Yes	Yes			Yes	Corporate Training

Committee names may differ or two of the committees could be a single committee in some jurisdictions.

Source: Annual Reports / Governance Statements

Discussion of Key Issues

To ensure proper oversight of investment, governance/human resources, and audit/finance functions, the Independent Review Panel sees a need for specific Board Committees in these critical areas with clearly defined mandates, again underscoring the need for a mix of competencies of Board members.

The WHSCC recognizes the need to have proper oversight in these areas in its *2007-2012 WHSCC Strategic Plan & Risk Assessment*. A number of initiatives are set out including: dedicating resources to policy, governance, investment management, and financial management to ensure the highest standards in governance and administration.

The Commission's Financial Services Evaluation Committee oversees financial services policies, activities, and reporting. The members of the committee also fulfill the responsibilities of an audit committee. Furthermore, their terms of reference indicate they have responsibility for monitoring decisions and performance related to the Commission's investment portfolio.

...finance/audit functions and the investment functions ... should be separate...

The Independent Review Panel considers that the finance/audit functions and the investment functions of the Financial Services Evaluation Committee should be separate to ensure specific oversight of these critical areas.

Investment income is an important revenue stream for the Commission. It is relied on to supplement assessments to cover total expenses for the year. An Investment Committee would be responsible for developing policy for the prudent investment of the accident fund reserve, regularly reviewing and advising the Board about

investments, and making recommendations about the engagement of appropriate investment managers or advisors.

An Audit/Finance Committee would be responsible for the audit and risk management functions of the organization, including financial statements, external audit processes, and management audit. This Committee would oversee the organization's financial strategies and performance, assessment-rate-setting, and the Annual Report.

Finally, a Governance/Human Resources Committee would ensure that the Board's governance policy reflects best practices. This Committee would be responsible for Board orientation, development and performance evaluations. It would review and consider recommendations on corporate goals and performance, executive compensation, succession plans, and identify candidates for Appeals Tribunal appointments. This Committee would also have the responsibility for overall Human Resources policy and should, in the Panel's opinion, develop and maintain a comprehensive Governance Manual ensuring all Board Committees and members' roles are clearly defined.

Recommendation #9

The Independent Review Panel recommends the establishment of three Committees of the Board of Directors to ensure specific oversight of certain critical areas – Investment Committee, Audit/Finance Committee, and Governance/Human Resources Committee. The Committees would be appointed by the Board on recommendation of the Chair and as always, ensuring equal stakeholder representation on each Committee.

Reporting Structure and Accountability

The Minister of Post-Secondary Education, Training and Labour is responsible for the WHSCC and as such makes the Annual Report to the Legislative Assembly on behalf of the WHSCC outlining its transactions during the preceding year. The Minister also reports to the Lieutenant-Governor in Council on other WHSCC matters, i.e., administrative, financial, on behalf of the Commission. The Chair is the link between the Minister and the WHSCC.

The Chair is the link between the Minister and WHSCC.

The President and CEO is responsible to the Board of Directors for the operations of the Commission within the parameters of the policies set out by the Board and the legislation.

In addition to its legislated responsibilities, the Board of Directors issued a governance statement, updated in May 2007, describing the roles and responsibilities of the Board and the governance principles it has chosen to use to meet these responsibilities.

The Board is further responsible to establish an Appeals Tribunal and to nominate/appoint members necessary to carry out the appeal

responsibilities, with the exclusion of the Chairperson and Vice-chairpersons of the Tribunal. These are appointed by the Lieutenant-Governor in Council.

On a day-to-day basis, the Appeals Tribunal operates separately from the WHSCC, although the Chairperson is a non-voting member of the Board of Directors. The Chairperson reports to the Board of Directors on the administrative operations of the Appeals Tribunal.

The Board of Directors has the overall responsibility for ensuring the organization fulfills its responsibilities as articulated in the legislation. The Board has the authority to recommend legislative and regulatory changes it considers in the best interest of the organization after research and cost considerations are completed. The Board also has the responsibility for policy. The Commission is required by legislation to have audited financial statements and the auditor's report shall be included in the Annual Report of the Commission.

Public accountability is traditionally addressed via the Standing Committee on Crown Corporations whereby the President and CEO of the Commission, accompanied by the Chair, are invited to appear. This is comparable to most other jurisdictions as can be seen in the following table.

Public Accountability

AB	Traditionally done via Standing Committees with Minister present but changes have been made this year to allow Standing Committees to invite the WCB President and CEO directly without the Minister present.
NS	Standing Committees - The President/CEO as well as the Chair of the Board is often invited to attend.
ON	Standing Committees - The President/CEO as well as the Chair of the Board is often invited to attend.
BC	Always represented by the Minister.
MB	Standing Committees - The President/CEO as well as the Chair of the Board is often invited to attend.
PE	Briefing note provided to Minister who will represent WCB. The only times a representative from WCB would be invited is when addressing legislative amendments.
QC	Standing Committees - The President/CEO as well as the Chair of the Board is often invited to attend.
NB	Standing Committees - The President/CEO as well as the Chair of the Board is often invited to attend.
NL	N/A
SK	Standing Committees - The President/CEO as well as the Chair of the Board is often invited to attend.
NT / NU	Before Accountability and Oversight Committee.
YK	Standing Committees - The President/CEO as well as the Chair of the Board is often invited to attend.

Source: Email / telephone contact with Workers' Compensation Boards

Discussion of Key Issues

...accountability is to WHSCC stakeholders...

The Independent Review Panel believes that as the WHSCC is primarily funded by employers and not the public purse, its accountability is to its stakeholders of whom Government is one as a purchaser of services, not as a rate assessed employer. This accountability is appropriately communicated through the Commission's Annual Reports and formal reports to stakeholders.

The Annual Report to the Legislature outlines the Commission's goals, objectives, and achievements, as well as provides an overview of each operational division and the Commission's financial statements.[6]

The Annual Stakeholder Report also outlines the goals of the Commission, as well as the measures set to achieve them and the corresponding results.

In addition to the Stakeholder Report, the Commission publishes a quarterly report entitled, *Being Accountable: Working Towards Healthy and Safe Workplaces in New Brunswick.* "This quarterly accountability document provides a regular update of the Commission's progress in achieving the goals. A summary of financial information and key volume indicators for the quarter is also provided within this report."[7]

The *2007-2012 Strategic Plan & Risk Assessment* is the other main accountability document published by the Commission. It examines the internal and external risks the Commission faces and guides the Commission's decision for the allocation of resources to initiatives to mitigate the risks.

The Independent Review Panel believes a value-for-money audit of the WHSCC every five years would further enhance the current forms of public accountability utilized by the WHSCC rather than mandatory periodic reviews by an independent commission.

The Panel was informed that the Commission requires government approval of its collective agreements with its employees' bargaining agents under the *Public Service Labour Relations Act:*

> **62** A separate employer may, with the approval of the Lieutenant-Governor in Council, enter into a collective agreement with the bargaining agent for a bargaining unit comprised of employees of the separate employer, applicable to employees in that bargaining unit.

The Panel believes that this requirement is inconsistent with an independent and stakeholder driven agency, especially one that is not, for the most part, spending public funds. The Panel considers this to

[6] 2006 WHSCC Annual Report
[7] Being Accountable: Working Towards Healthy and Safe Workplaces in New Brunswick, Third Quarter Results (July 1 – September 30, 2007), p. 5.

...it is the stakeholders who are best equipped to decide on the Commission's priorities...

be inappropriate and that the WHSCC should be authorized to negotiate, enter into, and sign its own collective agreements.

As the Panel discusses in other sections of its Report, it is the stakeholders who are best equipped to decide on the Commission's priorities and benchmarks such as benefits and legislative and regulatory changes. These decisions should be made by the Board of Directors through their consensus decision-making model. The Independent Review Panel is aware that on occasion in the past, where the Board of Directors has recommended legislative or regulatory change, Government has not acted upon them.

As well, the Board of Directors has also on occasion recommended against certain changes after considerable research, yet Government has acted on its own.

Both scenarios cause the Independent Review Panel great concern. It undermines the roles and responsibilities of the Board of Directors, deviates from the consensus decision-making model and encourages political lobbying by stakeholders to advance their own agendas.

Recommendation #10

The Independent Review Panel recommends the Government of New Brunswick direct the Auditor General to conduct a value-for-money audit of the WHSCC every five years to ensure public accountability of the Commission rather than mandatory periodic reviews by an independent commission.

Recommendation #11

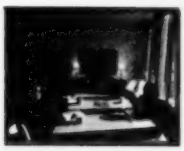
The Independent Review Panel recommends that Government give the authority to the Workplace Health, Safety and Compensation Commission to negotiate, enter into, and sign its own collective agreements.

Effectiveness

To effectively govern the Commission, the Board of Directors continuously reviews its risks, strategic direction, and policy responses. The Board has in place a large number of policies to direct the operations of the Commission which are reviewed on a regular schedule.

The Board's efficiency goal "to hold assessment rates to employers at the lowest level possible, consistent with the best benefits possible to clients"[8] is measured by the Commission's ability to maintain at a minimum, a fully-funded liability. Under the *Workers' Compensation Act*, a minimum funding level of 100 percent is required with any shortfall to be covered over a period of five years. According to this measurement the Board was effective in 2006.

[8] 2006 WHSCC Stakeholder Report, p. 18.



Assets held to meet future benefit obligations for past injuries reached $1.035 billion at the end of 2006, representing a 111.0% funded liability. The WHSCC investment portfolio produced an annual return of 13.3%. The provisional assessment rate decreased by $0.05 from 2005, to $2.14. This represents the second consecutive year that the assessment rate decreased. In 2006, New Brunswick's rates continued to remain the lowest in Atlantic Canada.[9]

One of the questions asked by Omnifacts Bristol Research during a Client Satisfaction Survey in December 2006 was "Tell me whether you completely agree, mostly agree, mostly disagree or completely disagree that the WHSCC is effectively run." No major trends were reported, but the perception slightly improved among non-registered employers, slightly declined among injured workers and remained stable between the registered employers and the general workers.

Summary Results:
Percentage indicating 'Completely Agree or Mostly Agree'

	2005	2006
Registered employers	70%	68%
Non-registered employers	51%	56%
Injured workers	74%	70%
General workers population	62%	59%

Discussion of Key Issues

The above perception of the respondents may be subjective. For the true effectiveness of the Board in making progress towards measureable goals, the Independent Review Panel encourages the Board of Directors to continue to articulate its goals and benchmarks and regularly report its progress to stakeholders.

Policy Development and Foresight

The WHSCC Board of Directors has complete responsibility for the Commission's policies and direction. As such, the Board approves policies which provide the Board of Directors' interpretation of the legislation and regulations. Policies also provide staff with the guiding principles required to fulfill their responsibilities, i.e., case managers are expected to follow policy for decision-making. As well, policies should communicate to stakeholders how the Commission conducts its business.

...Board of Directors has complete responsibility for the Commission's policies and direction...

[9] 2006 WHSCC Stakeholder Report, p. 18.

WHSCC defines policies as "documents approved by the Board of Directors, providing interpretation of legislation or regulations, and direction for the operation of the Commission that is consistent with its vision, mission, mandate and goals."[10] Currently, WHSCC has approximately 140 policies with an established timeframe for review of each policy - approximately every five years.

During discussion with members of the Board, it was indicated that about 75 percent of the Board's work is policy development, i.e., improvement to benefits is through policy discussion. Policy is reviewed by the Board approximately every two months and is supported by the Policy and Planning Department of the Commission. The Independent Review Panel commends the Board of Directors' systematic review of policy and the time spent reviewing the issues/risks that may affect the Commission.

The identification and management of risks by the WHSCC is consistent with modern risk management. The *2007-2012 WHSCC Strategic Plan & Risk Assessment* is the Commission's result-focused plan that includes the identification of measures to achieve its goals and:

> "Represents each Board member's commitment to ensuring that the compensation system is affordable for employers, that benefits are appropriate and secure for workers, and that the system is sustainable in the years to come. It represents our commitment to examine the internal and external issues facing the Commission and the Board's responsibility to: identify risks; determine if the risk is at an acceptable, cautionary, or unacceptable level; and guide the Commission's decisions for allocating resources to initiatives that will mitigate the risks, further the Strategic Goals, and achieve our Vision."[11]

Stakeholder Input

...need to consult internal and external stakeholders...

The document on developing policy (Policy No. 43-001) clearly articulates the need to consult internal and external stakeholders as part of the process when developing policy-related documents.

As well, the WHSCC sponsors the Injured Workers' Advisory Committee, a forum for discussing issues relevant to injured workers in the Province of New Brunswick and to provide suggestions to improve the quality and type of services and programs offered by the Commission. The intent of the Committee is to provide feedback and to gauge reactions of injured workers concerning potential changes to or development of policies and programs. The Independent Review Panel heard the latter was the primary function of the Injured Workers' Advisory Committee.

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[10] WHSCC Policy No. 43-001, p. 1.
[11] 2007-2012 WHSCC Strategic Plan & Risk Assessment, p. 2.

Discussion of Key Issues

The Independent Review Panel is concerned that there does not appear to be any structured process for injured workers to be consulted, given the informal structure of the Injured Workers' Advisory Committee. The Panel has the impression they are not fulfilling the full scope of their mandate:

> The Injured Workers' Advisory Committee...is a forum for discussing issues relevant to injured workers in the Province of New Brunswick.
>
> The purpose of the Advisory Committee is to discuss concerns and provide suggestions on behalf of injured workers, their representatives or their representative associations. The aim is to improve the quality and type of services and programs offered by the Commission.[12]

The Panel did have the opportunity to meet with the Injured Workers' Advisory Committee. As well, in its travels around the province, the Panel heard from many injured workers, most of whom had very strong thoughts on various aspects of the system. It appeared that there was minimal connection between the Committee and other injured workers. The Panel believes injured workers can provide valuable input and should have a mechanism to be heard.

All Boards have a policy manual and most have a formal process in place for engaging stakeholders in their policy development. See Appendix 5 for detailed information.

New Brunswick is one of the few jurisdictions where there is no formal process on how the stakeholders are identified or should be engaged. However, the Independent Review Panel heard that the WHSCC regularly consults stakeholders on issues dealing with compensation, as well as workplace health and safety. Considering the importance and time the Board places on policy development and review, the Panel identifies this lack of a written formal process as an area that must be improved. Furthermore, greater opportunity for participation by stakeholders may better serve the overall goals of the Commission. For example, policies in review could be posted on WHSCC's website for 60 days to obtain stakeholder input. The first draft of the policy could then be reposted for another 30 days to allow for stakeholders to provide further input on the changes suggested before finalizing and implementing the policy. This process must allow sufficient time for submissions from stakeholders including the opportunity to review the final draft policy.

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[12] Injured Workers' Advisory Committee Mandate, July 2003

The Panel believes the Commission's stakeholder list should be posted on its website. This would allow stakeholders to update their contact information, if necessary, and allow other interested stakeholders to be added ensuring the opportunity for a more inclusive consultation process.

Recommendation #12

The Independent Review Panel recommends that WHSCC take measures to better define the roles and responsibilities of the Injured Workers' Advisory Committee.

Recommendation #13

The Independent Review Panel recommends the WHSCC develop a formal consultation process to ensure the active engagement of all stakeholders in the policy development and renewal processes.

Recommendation #14

The Independent Review Panel recommends the Commission's stakeholder list be posted on its website.

Official Names of Workers' Compensation Boards

The official or legal name of the New Brunswick's workers' compensation system has changed a number of times since its inception.

The Knowles Report in 1917 recommended that New Brunswick adopt Workmen's Compensation legislation. Over the years, the scope and coverage gradually expanded to include a greater percentage of the labour force. The 1980 Boudreau Report recommended that government establish an Occupational, Health and Safety Commission to reflect the concern with safety in the workplace. The report also suggested a change in the name of the *Act* to the *Workers' Compensation Act* to reflect the growing number of women in the workforce.

In 1994, a Ministerial Committee was asked to bring forward recommendations for the merger of the Workers' Compensation Board and the Occupational Health and Safety Commission with the intent these would be the foundation for a new corporate Board to be called the New Brunswick Workplace Health, Safety and Compensation Commission.

The following table shows the legal names of the Workers' Compensation Boards in Canada. In 2005, the Workers' Compensation Board of British Columbia became WorkSafeBC — a name that more accurately reflects their focus on prevention, customer service, and return to work. While the Workers' Compensation Board of British

Columbia remains the legal name, WorkSafeBC is now the name used on a daily basis.

Name of Workers' Compensation Boards

AB	Workers' Compensation Board Alberta
BC	Workers' Compensation Board of British Columbia WorkSafeBC – operational name
MB	Workers Compensation Board of Manitoba
NB	Workplace Health, Safety and Compensation Commission of New Brunswick
NL	Workplace Health, Safety and Compensation Commission
NT/NU	Workers' Compensation Board Northwest Territories and Nunavut
NS	Workers' Compensation Board of Nova Scotia
ON	Workplace Safety and Insurance Board
PE	Workers' Compensation Board of Prince Edward Island
QC	Commission de la santé et de la sécurité du travail
SK	Saskatchewan's Workers' Compensation Board
YT	Yukon Workers' Compensation Health and Safety Board

Source: Annual Reports, jurisdictional websites

Discussion of Key Issues

During the Panel's review process, the Board of Directors was actively considering an operational name change to reflect its priority on developing a culture of safety and prevention of injuries. British Columbia has already made such a change. As well, Manitoba's February 2005 review of the *Workers' Compensation Act* suggested a consultation with stakeholders on whether to rename the Workers' Compensation Board to reflect its mandate for prevention.

The Independent Review Panel accepts the rationale for an operational name change that is consistent with the Commission's mandate for prevention of injuries, the primacy of safety, and one of shared responsibility of health, safety, and accident prevention. It is interesting to note that during the Panel's public consultations, it heard the Workplace Health, Safety and Compensation Commission referred to by a variety of names, but rarely by its legal name.

Additional Considerations

...people find the Workers' Compensation Act difficult to understand and follow.

Comments heard during the Independent Review Panel's consultation process indicated that many people find the *Workers' Compensation Act* difficult to understand and follow. Previous reviews of New Brunswick's workplace health, safety and compensation system recommended re-writing the *Act*. Over the years there have been many amendments to the *Act*, as well as sections that have been

repealed, but never a complete re-write of the *Workers' Compensation Act*.

Recommendation #15

The Independent Review Panel recommends the Workers' Compensation Act should be written in plain and consistent language. It should be reorganized in a logical, sequential, and grouped manner and definitions throughout the Act should be updated and clarified where necessary.

Mandate Question Overview

The Independent Review Panel was asked to assess how well the Workplace Health, Safety and Compensation Commission compares to other Canadian jurisdictions in terms of the structure of the Board of governance, policy development and foresight, and stakeholder input.

WHSCC governance is the collective responsibility of the people who serve as Directors. They must serve in the best interests of the organization, not a particular stakeholder group.

The thrust of the Independent Review Panel's governance recommendations is to create a more independent Commission that is stakeholder driven, as well as to strengthen the accountability of the WHSCC to its stakeholders. Although the structure of the Board of governance is similar to other Canadian jurisdictions, the intent is to underscore one of the original Meredith Principles - that of an autonomous agency.

While the Independent Review Panel heard that the Workplace Health, Safety and Compensation Commission does consult stakeholders, the Panel believes there is a need for a more formal consultation process such as is found in other jurisdictions. This would ensure the active engagement of all stakeholders in the policy development and renewal processes.

Although the purpose of the Independent Review Panel is to identify opportunities for improvement as WHSCC looks to the future, the Panel sees no reason to deviate from the original Meredith Principle of an independent agency:

> **The governing Board is both autonomous and non-political. The Board is financially independent of government or any special interest group.**

Prevention of Injuries

How well does the Workplace Health, Safety and Compensation Commission address prevention of injuries, including occupational health and safety education, resources allocated to education and results achieved, such as measures of accident frequency?

Prevention of Injuries

This section discusses prevention of injuries by the New Brunswick's Workplace Health, Safety and Compensation Commission, the mandate question of the Independent Review Panel's Terms of Reference - How well does the Workplace Health, Safety and Compensation Commission address prevention of injuries, including occupational health and safety education, resources allocated to education and results achieved, such as measures of accident frequency?

Background

The Meredith Principles became the foundation for Canadian workers' compensation systems in 1913. Although prevention of injuries was not specifically addressed in the Meredith Report these principles, as established, need to be augmented to reflect the realties of today and the challenges of tomorrow. Workers' Compensation Boards are changing their focus and emphasis to prevention of injuries and occupational diseases through education and training.

WCBs are changing their focus and emphasis to prevention of injuries...

In New Brunswick, the 1980 Boudreau Report explained that the responsibility for prevention was under the Workers' Compensation Board, but was split at the time, across the Departments of Labour and Manpower, Health and Natural Resources and the Occupational Health and Safety Council. It was mentioned as well that:

> Although government, through the *Occupational Safety Act*, clearly indicates that safety and health are areas of shared responsibility between itself, labour and management, the structures for determining the policy direction of some of these agencies tends to involve only government while in others it is dominated by management and only minimal participation by labour and government.[1]

It suggested that one entity should be responsible for occupational health and safety, and recommended that government create the New Brunswick Occupational Health and Safety Commission under the responsibility of the Minister of Labour and Manpower.

The Boudreau Report also stated that "if the long-term goal of changing attitudes toward safety is to be realized, there needs to be greater inclusion of occupational health and safety matters in related educational programs of agencies involved."[2]

It further suggested that companies with poor records in health and safety should be penalized and those with good records rewarded through a merit-demerit scheme. The Report underlined that policies related to occupational health and safety must be coordinated by all of

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[1] The Boudreau Report (1980). Workers' Compensation Study Committee, pp. 23-24.
[2] Ibid, pp. 28-29.

the agencies responsible for occupational health and safety and the initiatives that are put into place should be based on tried methods.

...workers and employers...trained to take care of prevention on their own (Internal Responsibility System).

The 1988 Words Gordon Report suggested the Occupational Health and Safety Commission should be independent and that it would be funded by employers on a system based on collective liability. Their reasoning was that the resources available are too spread out, and that unification would also be better for the allocation of administrative resources, and that communication would be easier. It was also suggested that workers and employers should be trained to take care of prevention on their own (Internal Responsibility System). The Woods Gordon Report expressed that efforts must be focused due to the large number of small businesses and that field workers should not have territories that are too large to manage. [3]

In 1994, following the announcement of the merger of the Workers' Compensation Board and Occupational Health and Safety Council, legislation provided that the new Workplace Health, Safety and Compensation Commission would have responsibility over both the *Workers' Compensation (WC) Act* and the *Occupational Health and Safety (OHS) Act*. The Board was given a mandate to administer and to create programs dealing with safety, prevention, education, compensation, inspections, compliance, and similar matters.[4]

What We Heard...

During the consultation process, the Independent Review Panel heard from many stakeholders on a wide variety of issues related to the prevention of injuries and the enforcement of the *Occupational Health and Safety Act*. Some stakeholders indicated that overall they were pleased with the system.

Budget issues heard related to increasing the budget for health and safety initiatives and increasing the Occupational Health and Safety grant provided by the Government of New Brunswick.

[3] A Review of the New Brunswick Workers' Compensation Board, Phase 11, Vol.1. (1998) Woods Gordon Management Consultants.
[4] Ministerial Report: Recommended Structure for the New Brunswick Health, Safety and Compensation Board. (1994), p. 8.

...What We Heard...

A variety of occupational health and safety initiatives were suggested including: the development and funding of a safety training project; pursuit of partnerships to develop on-line and electronic resources for practical application of health and safety knowledge; additional prevention programs with costs shared by associations and unions; creation of "right to practice" legislation embracing the entire safety management population of New Brunswick; creation of more safety associations in other sectors similar to the construction industry; and the requirement for all independent owners/operators of trucks to comply to appropriate training if they are to be covered by the hiring contractor.

The Independent Review Panel heard that there should be an increase in the thoroughness and number of workplace inspections; that there should be an equal number of inspection visits in all sectors of the construction industry, i.e., commercial, residential, and industrial without passing by smaller contractor sites; that inspectors who visit construction sites should have long-term experience in the sector; and that there should be more stop work orders and less written suggestions for improvement. Also mentioned was the need for an increase in the number of compliance staff.

Enforcement was another area where the Independent Review Panel heard a number of suggestions for improvement. We heard there should be a new maximum fine level of $500,000 with more prosecutions and higher fines for serious occupational health and safety violations and a ticketing based system for less serious infractions; an overall increase in penalties and employers' accountability under the *Occupational Health and Safety Act*. Others suggested if the maximum fine level was raised, similar sanctions must be put in place for workers as safety is a shared responsibility; and punitive assessment should be proportional to the severity of the accident. The Panel heard that administrative penalties should be used for workers who don't take reasonable steps to return to work. It was suggested that there should be transparency in determining the amount of punitive assessment and this could be accomplished through input from stakeholders/employers/workers.

The Independent Review Panel heard that Courts should have the flexibility to impose more creative sentencing that results in positive, action-oriented measures to improve safety performance.

The Joint Health and Safety Committees (JHSC) were an area that received a number of suggestions for improvement. These included: increased training for JHSC; better tracking and reporting on workplace

...What We Heard

safety issues and JHSC activities and requiring employers to respond to the committee's recommendations within a specified timeframe; having employers consult with and obtain agreement from JHSC before implementing safety decisions which affect worker health and safety. We heard that JHSC worker members must be non-management employees and that in a unionized workplace, the worker committee member must be chosen by trade union(s) representing employees. There were opinions expressed on the need for additional JHSCs and training in the school system and allowing members of the Committee at least one hour of preparation time prior to the meetings. A number of stakeholders recommended changing Section 15 of the legislation to empower Joint Occupational Health and Safety committees by changing it to say "a committee shall" rather than a committee "may".

The Independent Review Panel heard a number of viewpoints about education and workplace training including; stronger enforcement of employer's obligations towards workplace training; the need for WHSCC safety officers to familiarize themselves with specific training programs offered in different industry sectors; provision for all employees to receive a minimum of eight hours of workplace hazard specific training on an annual basis paid by the employer; and comprehensive health and safety training for younger workers before they conduct any work in the workplace. We heard that the legal onus on employers for training should be strengthened by adopting Section 19 of Saskatchewan's health and safety legislation. It was suggested that the Department of Finance could offer tax deductions or other incentives to employers who undertake specific occupational health and safety programs.

The Independent Review Panel heard high risk areas should be determined and efforts should be focused on educating employers and employees; occupational health and safety should be an integral part of the K-12 curriculum; the current outreach and education programs offered by WHSCC should be enhanced; and the training activities from WHSCC should be transferred to external sources.

Finally, the Panel heard the need to: increase the overall emphasis on health and safety (education, prevention, training); include sexual harassment, violence and bullying as occupational and health safety issues; strengthen the internal occupational health and safety system; ensure the shared responsibility between contractors and owners in the construction industry; establish an Occupational Health and Safety Advisory Committee following active consultation with the labour and employer communities; and prohibit an employer from assigning another employee to perform work of an employee who has exercised the right to refuse unsafe work until a determination has been made by the compliance officer.

New Brunswick Situation

The worker's compensation system and the occupational health and safety system are funded by assessments paid by registered employers for the cost of accidents today and the future liability of these accidents. There are approximately 13,600 assessed employers who contribute to the system. Their contributions provide a workplace compensation system to approximately 291,900 workers and health and safety services to approximately 333,700 workers.[5] The Commission has dual responsibility for compensation as well as occupational health and safety in New Brunswick workplaces.

The New Brunswick *Occupational Health and Safety Act (OHS Act)* is the foundation for occupational health and safety in the province. The *Occupational Health and Safety Act* establishes the legal obligations of employers, owners, contractors, sub-contractors, employees, and suppliers. It also outlines requirements for the establishment of joint health and safety committees or the appointment of a health and safety representative, and the powers of occupational health and safety officers. The *Act* places primary responsibility for health and safety issues in the hands of the people in the workplace and gives them three basic rights: the right to know about workplace hazards, the right to participate in solving health and safety problems, and the right to refuse dangerous work, the same model as other Canadian jurisdictions. If workers are discriminated against for exercising any of these rights, the *Act* provides for an arbitration process as an impartial dispute-resolution tool.

...three basic rights...right to know...right to participate...right to refuse...

In addition to the above noted "rights", the key responsibilities under the legislation for workers (Sections 12) are to:

- Conduct himself to ensure his own health and safety and that of other persons at, in or near his place of employment;
- Report to the employer the existence of any hazard of which he is aware; and
- Wear or use such protective equipment as is required by regulation.

The key responsibilities under the legislation for employers (Section 9) are to:

- Take reasonable precaution to ensure safety of employees;
- Ensure the necessary systems of work, tools, equipment, machines, devices, and materials are maintained in good condition and are of minimum risk to health and safety when used as directed by the supplier or in accordance with the directions supplied by the supplier;
- Ensure that the place of employment is inspected at least once a month to identify any risks to the health and safety of his employees;

[5] 2007-2012 WHSCC Strategic Plan & Risk Assessment

- Acquaint an employee with any hazard in connection with the use, handling, storage, disposal, and transport of any tool, equipment, machine, device, or biological, chemical, or physical agent;
- Provide such information, instruction, training, and supervision as are necessary to ensure an employee's health and safety;
- Provide and maintain in good condition such protective equipment as is required by regulation and ensure that such equipment is used by an employee in the course of work; and
- Co-operate with a committee, where such a committee has been established, a health and safety representative, where such a representative has been elected or designated, and with any person responsible for the enforcement of this Act and the regulations.

Under the *Occupational Health and Safety Act* and the *Workplace Health, Safety and Compensation Commission Act*, the Commission is responsible for:

- Promoting workplace accident prevention through training, education, and consultation;
- Promoting understanding of, acceptance of, and compliance with the *OHS Act* and Regulations; and
- Administering and enforcing the requirement of the *OHS Act* and Regulations.

These responsibilities are reflected in the strategic direction of the Commission with its safety goal of significantly reducing accident frequency. This goal is described as the "vigorous pursuit of a safe work culture that will lead to a decline in the overall frequency of accidents and a significant decline in the overall frequency of accidents in industries and firms where our resources are focused"[6].

WHSCC has put into place a number of strategies to achieve its safety goal including:

- Leveraging best practices in prevention, compensation, and rehabilitation;
- Knowing New Brunswick workplaces; and
- Educating New Brunswickers.

The measurements of this goal are discussed later in the document.

In the 2006 WHSCC Annual Report, the Commission described its vision as "healthy and safe workplaces in New Brunswick"[7]. The mission statement for the Commission included the promotion of a safe and healthy work environment to the workers and employers of New Brunswick. Part of its overall mandate was to promote the creation of a workplace culture in which all employers and workers view all occupational diseases and accidents as being preventable.

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[6] 2006-2011 WHSCC Strategic Plan & Risk Assessment
[7] 2006 WHSCC Annual Report

The following is an excerpt from Policy No. 24-001: Occupational Health and Safety Philosophy:

> The *Occupational Health and Safety Act* is based on the internal responsibility system, which requires all individuals in the workplace to take primary responsibility for the health and safety of themselves and others. The *Occupational Health and Safety Act* defines the rights and responsibilities of every individual in the workplace regarding health and safety.

The *Roles and Responsibilities* section of the policy statement describes principles that are to be followed by WHSCC to promote safe and healthy work environments in New Brunswick. They are as follows:

- The internal responsibility system is the foundation for achieving health and safety in the workplace;
- Employers shall take all necessary measures to ensure the health and safety of their employee;
- Employees who are adequately informed and empowered can effectively fulfill their health and safety responsibilities;
- The Commission allocates its available resources in an effective and efficient manner to improve health and safety in New Brunswick's workplaces;
- The Commission monitors and evaluates the services it provides to employers and employees to ensure the services are relevant, appropriate, and accepted by New Brunswick workplaces; and
- The Commission ensures the delivery of quality occupational health and safety services to New Brunswick workplaces.

Currently, the WorkSafe Services Division of the Workplace Health, Safety and Compensation Commission is responsible for administering New Brunswick's *Occupational Health and Safety Act* and *Workers' Compensation Act*. Some of the Division's responsibilities include: the promotion of workplace health and safety "through a variety of accident prevention initiatives; providing businesses with in-depth health and safety planning and consulting services; and conducting health and safety inspections, accident investigations, as well as arbitration hearings under the *Occupational Health and Safety Act*."[8]

Prevention and education activities include: initiatives targeted at youth and small businesses; newsletters; an annual health and safety conference and workshops; hazard and risk alerts; and safety talks: all aimed at educating employers, workers, as well as the public about safety in the workplace. The Zero Tolerance campaign that began in 2005 focuses on three areas – trenching, fall protection, and tag and lockout (bringing equipment to zero energy before starting maintenance). In 2006, the Commission launched a social marketing

[8] 2006 WHSCC Annual Report, p. 17.

campaign – *Injuries are No Accident* – aimed at educating the public that accidents are preventable and not acceptable.

Structure

...accidents are preventable and not acceptable...

All Canadian jurisdictions follow a similar legislative model in occupational health and safety. However, the responsibility for prevention and enforcement may be administered differently in each jurisdiction. Administration and enforcement follow two paths, one of which is Workers' Compensation Boards being responsible for both prevention and enforcement legislated under specific Acts such as in New Brunswick, British Columbia, Québec, and Northwest Territories/Nunavut. In other jurisdictions such as Newfoundland and Labrador, Nova Scotia, and Ontario, the responsibilities are split between government and the Workers' Compensation Boards.

Both prevention and compliance are the responsibility of the New Brunswick WHSCC. This is not the same for all jurisdictions. In some jurisdictions prevention and compliance are united and in others they are divided. The following table shows responsibility for occupational health and safety by jurisdiction.

Who is Responsible for OHS and Effective Date

	Enforcement	Training/ Education	Prevention
AB	AB Gov't - 1976	AB Gov't - 1976	AB Gov't - 1976
BC	WCB	WCB	WCB
MB	MB Gov't - 1977	MB Gov't - 1977	MB Gov't and WCB – 2006
NB	WHSCC - 1995	WHSCC - 1995	WHSCC - 1995
NL	NL Gov't	WHSCC - 1998	WHSCC - 1998
NT/NU	WCB - 1996	WCB - 1996	WCB - 1996
NS	NS Gov't	WCB	WCB
ON	ON Gov't	WSIB - 1998	ON Gov't
PE	WCB - 1996	WCB - 1996	WCB - 1996
QC	CSST - 1980	CSST	CSST
SK	SK Gov't - 1972	SK Gov't - 1972	SK Gov't - 1972
YK	WCB - 1992	WCB - 1992	WCB - 1992

Source: AWCBC

Discussion of Key Issues

Having an integrated system is beneficial when looking at prevention issues and the development of prevention strategies for high risk industries through analyses of experience ratings and claims

information. The Independent Review Panel accepts the system should continue to be an integrated one with prevention of injuries and enforcement under one organization. Operationally, prevention and enforcement at WHSCC is also an integrated model with regional managers responsible for the safety officers, as well as the compensation delivery/case management system in their region. Regional managers report through the Vice-President of the WorkSafe Services Division who has the responsibility for compliance and enforcement of the *Act,* promotion of workplace health and safety, adjudication and benefit services, rehabilitation, and case management.

The Independent Review Panel was initially concerned that there was not a senior ranking executive with sole responsibility for prevention. It first appeared to the Panel that it would be better to have a division responsible only for prevention of injuries. The arguments for an integrated model were convincing, thus we are not prepared to make recommendations at this time. However, the Commission should examine this on a regular basis.

Funding

In British Columbia, Northwest Territories and Nunavut, Ontario, and Saskatchewan, all the required funding for occupational health and safety is provided by the Workers' Compensation Boards. In New Brunswick, government provides a grant towards occupational health and safety initiatives, but it is funded primarily by employers as is Québec's plan. In other jurisdictions only part of the required funding is provided by Workers' Compensation Boards. Five jurisdictions provide for grants for occupational health and safety under their OHS legislation – Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, and Saskatchewan.

OHS Grants from Government Authorized under Legislation

AB	*Occupational Health and Safety Act* - s. 45
BC	No reference in Act
MB	*Workplace Safety and Health Act* - s. 13
NB	No reference in *Act*
NL	*Occupational Health and Safety Act* – s. 64 + ref. *Workplace Health, Safety and Compensation Act* – s. 20.4
NT/NU	No reference in *Act*
NS	*Occupational Health and Safety Act* – s. 10 and s. 82.1 (s)
ON	No reference in *Act*
PE	No reference in *Act*
QC	No reference in *Act*
SK	*Occupational Health and Safety Act* – s. 70 (d)
YK	No reference in *Act*

Source: OHS legislation

Discussion of Key Issues

Some jurisdictions provide grants to employer associations to help promote and develop safety programs amongst the association membership. In New Brunswick, industry safety associations are industry funded such as the Construction Safety Association and Forestry Safety Association. The cost of funding is collected by the WHSCC through an additional three percent levy on the industry memberships' assessment rates.

The Independent Review Panel encourages other industry sectors to consider industry specific safety associations.

Prevention Initiatives

WHSCC focuses efforts on industries and firms identified as higher risk...

The Commission administers the *Occupational Health and Safety Act* for all New Brunswick workplaces, concentrating its efforts on those industries identified as higher risk due to the number and cost of occupational injuries. According to the 2006 WHSCC Annual Report:

> The Commission continued to concentrate a considerable amount of its health and safety resources on industries with high numbers of claims and costs. Four industries were identified for particular attention; three of those industries were originally identified in 2003: forestry operations, sawmills, and nursing homes. The fish processing industry was added in 2005.[9]

Other industry groups, such as the potato harvesting industry, may be selected for smaller scale initiatives depending on such matters as changes in the industry and number of serious accidents.

Each year the Commission also focuses attention on specific firms based not only on the accident history of the industry, but the accident history of individual firms.

The health and safety prevention measures are conducted at three levels:

1. Primary workplaces – workplaces with higher costs/accident frequency rates and identified for priority intervention. The goals are injury reduction and health and safety infrastructure building;
2. Secondary workplaces – workplaces with higher costs/accident frequency rates and identified for some intervention. The goals are injury reduction and some health and safety infrastructure building; and

[9] 2006 WHSCC Annual Report, p. 19.

3. Tertiary workplaces - These workplaces receive one or more visits from a health and safety officer during the year with the goals of ensuring basic compliance and addressing issues identified in the industry.

In 2006, 77 companies received in-depth assistance with health and safety programs. As stated in the 2006 WHSCC Stakeholder Report, the overall accident frequency rate for firms selected have declined since 2002 from 16.99 accidents per 100 full-time employees/full-time equivalents (FTEs), to 12.94 accidents per 100 FTEs or a decrease of 23.8 percent.

Small business accounts for 83 percent of the Commission's client base. In 2006, WHSCC launched a campaign entitled Talk-Knowledge-Control designed specifically to help small businesses develop their own custom-tailored health and safety programs.

The campaign included direct mail of *The Small Business Guide to Health and Safety*, an interactive easy-to-use CD-Rom presentation that walks users through the basic steps of building a health and safety program. The CD was distributed to 11,900 businesses. The three steps are:

1. Preparing the foundations for a Health and Safety Program including:
   - Learning legislated requirements;
   - Developing a Health and Safety Policy; and
   - Establishing a Joint Health and Safety Committee (JHSC) or appointing a health and safety representative;
2. Identifying the most urgent health and safety issues; and
3. Solving the most urgent health and safety issues.

In 2007, to promote the campaign, WHSCC partnered with the Canadian Federation of Independent Business (CFIB) that represents about 4,500 small to medium-sized business owners across New Brunswick. CFIB will distribute the CD to all of the small businesses it visits as part of their membership renewal process.

Other health and safety prevention initiatives include public workshops, physician workshops, three-day Joint Health and Safety Committee Core Training workshops, youth-focused health and safety education through partnership with the Department of Education, small business campaign, Zero Tolerance campaign, social marketing campaign, and the WHSCC Annual Health and Safety Conference. In 2006, the Commission held 546 workplace health and safety workshops slightly less than the 552 held in 2005.

One of WHSCC Health and Safety Initiatives is called 5*22[10] based on five fundamental health and safety principles. They are:

1. Health and Safety Responsibility - having all management personnel accountable for preventing unsafe work practices and injuries emphasizing that health and safety in the workplace is a shared responsibility of workers, employers, and the Commission;
2. Management Commitment - being visibly and personally involved in workplace health and safety;
3. Employee Involvement - requiring individuals to be committed to health and safety;
4. Hazard and Risk Management - having a health and safety plan, applying preventative maintenance strategies, monitoring the workplace environment, and attending to occupational health, occupational hygiene, and ergonomic issues; and
5. Health and Safety Education – having an educational plan which includes: assessing all training needs, identifying the sources for training, and accessing educational materials and training sites.

Education

...embed health and safety in New Brunswick's school curriculum...

One of the Commission's objectives is to embed health and safety in New Brunswick's school curriculum. Eight years ago, the Commission approved initiatives to target New Brunswick's youth and teach occupational health and safety. The Commission, the New Brunswick Safety Council (NBSC), the Association of Safety and Health Consultants and Trainers Inc. (ASHCAT), the Red Cross, and the St. John Ambulance collaborated to create the Safety Start program. It was designed to reinforce health and safety by constantly exposing New Brunswick's youth to a proper health and safety philosophy.

Other prevention initiatives of the Commission targeted at youth include:

- *Choices for Life* - a handbook for teachers that provides age relevant activities for K-12 that follows New Brunswick school curriculum;
- *Stella the Safety Skunk* - a program available in all Anglophone K-2 schools that supports the new provincial 'You and Your World' curriculum."[11] The program was published in French in September 2007;
- Passport to Safety (PTS) - helps to strengthen awareness; and
- "No Mercy" campaign - a new youth oriented initiative to dissuade the notion that workplace accidents are a minor issue.

The Commission uses a year-end evaluation[12] of their youth initiatives. The review of August 2006 – August 2007 showed that in total 77,418

[10] http://www.whscc.nb.ca/522_e.asp
[11] WHSCC Youth Initiatives Year End Review: August 2006 to August 2007. p. 3.
[12] WHSCC Youth Initiatives Year End Review: August 2006 to August 2007. pp. 4-6.

students were exposed to health and safety awareness activities, up from 54,452 the previous year.

Every jurisdiction has outside agencies that help better serve their respective Boards for health and safety education. In some cases, an outside agency is created to better facilitate educating and training its own workers such as the Construction and Forestry Safety Associations in New Brunswick.

There are many new campaigns (publications, workshops) focused on new and young workers. More recently, the issue of 'violence in the workplace' and 'working alone and/or in isolation' have been addressed. Most Canadian jurisdictions have a 'general duty provision' in their health and safety legislation which requires employers to take all precautions to protect the health and safety of employees.

For example, in 1993, Saskatchewan adopted a new *Occupational Health and Safety Act* where Section 14 sets out the employer's responsibility in developing and implementing a policy to deal with violence in the workplace. Alberta's *Health and Safety Code 2006* states employers must develop a policy and procedures respecting potential violence and defines workplace violence as: "the threatened, attempted or actual conduct of a person that causes or is likely to cause physical injury." Alberta and Ontario have extensive information on their websites concerning the prevention of workplace violence including publications, workshops, and videos. British Columbia has several policies in place addressing the same issue. Prince Edward Island, in 2006, made amendments to their *Occupational Health and Safety Act* dealing with both "violence in the workplace" and "working alone". Québec has legislation regarding "psychological harassment" which may include forms of workplace violence. Nova Scotia has guidelines on workplace violence prevention and New Brunswick has an internal directive on prevention of violence in the workplace.

Joint Health and Safety Committees

JHSC...integral and essential component of the Internal Responsibility System...

Joint Health and Safety committees (JHSC) are an integral and essential component of the Internal Responsibility System and exemplify the right to participate. Committee responsibilities under the *Occupational Health and Safety Act* (Section 15) include:

- Make recommendations for the establishment and enforcement of policies involving health and safety practices;
- Participate in the identification and control of health and safety hazards at the place of employment;
- Inform employees and the employer of existing or potential hazards at the place of employment and of the nature of the risks to their health and safety;
- Establish and promote health and safety programs for the education and information of the employer and employees;

- Receive, consider and make recommendations to the employer regarding complaints respecting the health and safety of the employees at the place of employment;
- Maintain records respecting the receipt of, the consideration of and recommendations respecting complaints;
- Obtain information from the employer respecting the identification of existing or potential hazards of conditions, tools, equipment, devices, and machines at the place of employment;
- Carry out monitoring and measuring procedures by trained committee members where the Commission has determined there is a need for regular monitoring and measuring at the place of employment and has directed the committee to carry out such monitoring and measuring; and
- Investigate complaints respecting the health and safety of the employees at the place of employment.

Jurisdictions administer their joint health and safety committee regulations differently. Several jurisdictions require training for the members of JHSC or health and safety representatives. Others either do not include training requirements in their legislation or do not require training at all. Some jurisdictions use the possibility of higher legal fines as a deterrent, whereas other jurisdictions use administrative penalties that vary according to the nature of the offence to deter violation.

The New Brunswick *Occupational Health and Safety Act* defines the basic requirements for occupational health and safety structures:

> Every employer with 20 or more employees regularly employed at a place of employment shall ensure the establishment of a joint health and safety committee. A committee shall consist of such number of persons as may be agreed to by the employer and the employees. A committee shall consist of equal representation from both the employer and the employees, and the employer shall designate his representative or representatives and the employees shall designate their representative or representatives.

Also written in the *Act* is that project sites of 30 or more workers are required to form a joint occupational health and safety committee within two weeks of the beginning of work. Members of the JHSC must complete a three-day training program through the Commission. The requirement of a written safety policy coincides with the requirement to have a JHSC committee.

Compliance and Enforcement

The New Brunswick *Occupational Health and Safety Act* describes the role of an occupational health and safety officer and provides the legislative authority to enter places of employment to carry out inspections and investigations. Where the officer is of the opinion that unsafe or unhealthy working conditions may exist at a place of employment or that there may be a source of danger to the health or safety of workers, the officer has a number of options to foster compliance:

- Moral persuasion and written recommendation;
- Order to comply with legislation;
- Suspend the work or use of equipment that is deemed unsafe or unhealthy; and
- Prosecution. This involves taking court action for the offence under the *Provincial Offences Procedures Act (POPA)* and proving guilt before a fine (maximum $50,000) can be imposed under the *Occupational Health and Safety Act*.

Policy No. 24-013: Occupational Health and Safety Inspections and Investigations, provides guidance to Commission staff on when and in what manner to conduct inspections in the New Brunswick workplace. In 2006, charges brought under the *Occupational Health and Safety Act* resulted in fines of $85,600 (included fines levied earlier but only concluded in 2006). Fines collected in 2005 were $35,715 and $30,225 in 2004.

The criteria that will trigger inspections or investigations are statistics that show high incident and accident rates, potential for disasters, complaints, or Commission strategy[13]. The WHSCC has 33 officers to cover approximately 16,000 workplaces in New Brunswick[14].

According to the 2006 WHSCC Stakeholder Report, WorkSafe health and safety officers conducted 7,104 workplace inspections compared to 6,343 in 2005, and wrote 5,960 orders under the *Occupational Health and Safety Act* and Regulations compared to 5,821 in 2005. In 2006, the number of serious accident investigated including fatalities, fractures, and any injury that required hospitalization was 115, down from 129 in 2005. As well, staff carried out approximately 16,000 activities with workplace parties in the areas of education, ergonomics, hygiene, general consulting, and officer interventions.

The primary means of ensuring compliance is that a health and safety officer has the legislated authority to conduct inspections and investigations to enforce occupational health and safety legislation and/or regulations.

Some jurisdictions have regulations specific to certain industry as seen in the table below. For example, British Columbia, Northwest

[13] OHS Inspections & Investigations 24-013.
[14] 2006 WHSCC Annual Report

Territories and Nunavut, Ontario, Québec, and Yukon have specific regulations/safety codes for the construction industry.

Construction Regulations

AB	N/A
BC	OHS Reg. Section 20
MB	*Workplace Safety and Health Act* (Workplace Safety and Health Regulation) – not specific section for construction
NB	N/A
NL	*Occupational Health and Safety Regulations* under the *OHS Act* - not specific section for construction.
NT/NU	*Safety Act Regulation* Part V – Construction and Maintenance
NS	N/A
ON	OHS Regulation 213/91 – Construction Projects
PE	OHS General Regulations – Part 12 Excavations, Trenches and Construction
QC	OHS Regulations – Safety Code for Construction Industry (R.Q. c.S-2.1)
SK	OHS Regulations – no specific section for construction
YT	OHS Regulations – Part 10 – Construction and Building Safety

Source: OHS legislation across Canada

Fines for convictions resulting from violations under occupational health and safety legislation are common to every Canadian occupational health and safety statutes. Fines for first time convictions vary from $20,000 in Québec to $500,000 in Ontario and Northwest Territories/Nunavut and are $50,000 in New Brunswick.

Fines for First Time OHS Conviction

QC	$20,000
NB	$50,000
PE	$50,000
AB	$150,000
MB	$150,000
NS	$250,000
NL	$250,000
YK	$300,000
SK	$300,000
BC	$500,000
ON	$500,000
NT/NU	$500,000

Source: OHS legislation across Canada

Administrative penalties are fines imposed to encourage compliance with legislation. In some jurisdictions such as British Columbia and Yukon, health and safety officers have the authority to impose on-the-spot fines without requiring court action. For example, in Ontario, "ticketing" is used as a tool for enforcement. It is the immediate, on-site giving of a ticket (small fine) to an offender, much like a speeding ticket and is used for small offenses.

Until recently, New Brunswick relied on legal fines for enforcement. The Commission recognized that effective health and safety legislation administration included not only education, training, communication, and compliance testing, but also financial sanctions including methods such as higher assessment rates, fines, and demerits. Two new policies, Policy No. 24-210: OHS Demerits and Policy No. 24-210.01: OHS Demerit Process uses the authority of the *Workers' Compensation Act* on the collection of assessments to impose an additional employer assessment on employers who violate occupational health and safety legislation. The first offence may not be penalized and the demerit will not be applied in combination with a prosecution.

...financial sanctions include...higher assessment rates, fines and demerits.

The main purpose of demerits is to motivate the employer receiving the penalty and other employers to comply with the *Act* and *Regulations*. The Accident Review Committee considers whether an employer took all reasonable care to avoid the particular event and then determines whether to recommend prosecution, demerit, or other action. The new demerits program implemented by the Commission in 2006 imposes a financial penalty up to $25,000, without court action, for those employers in violation of the Zero Tolerance initiative (trenching, fall protection and tag, and lockout) or who are guilty of any violation more than once in a year.

The legislation provides for penalties and fines against employers and workers for various violations.

The number of safety/compliance officers varies across jurisdictions. In order to make an approximate comparison, jurisdictions were contacted about the number of safety officers employed, as well as the number of workers covered by their legislation (see following table). The number of assessed employers covered per safety/compliance officers ranged from 3,616 in Northwest Territories and Nunavut to 245,151 in Québec. In New Brunswick we have 33 safety officers, each of whom theoretically may be responsible for approximately 413 assessed employers.

The number of workers covered per safety/compliance officers ranged from 1,675 in Northwest Territories and Nunavut to 25,000 in Nova Scotia. In New Brunswick the number of workers covered per safety officer is approximately 8,845 under the *Workers' Compensation Act* and 10,112 workers under the *Occupational Health and Safety Act*.

Number of Safety / Compliance Officers

	Officers	Assessed Employers	Officer per Employer	Workers Covered	Officer per Worker
NS	WCB – 10 safety coaches and 2 education officers; Dept. Of Environment and Labour – 37	18,313	Safety: 1500 Compliance: 486.5	300,000	Safety: 25,000 Compliance: 8,108
NB	33	13,633	413	*WC Act:* 291,900 *OHS Act:* 333,700	8,845.5 10,112

	Officers	Assessed Employers	Officer per Employer	Workers Covered	Officer per Worker
AB	83	127,701	1,538	1,650,000	19,879
QC	295	245,151	8,20.9	3,073,400	10,418
ON	Approximately 700	226,000	323	4,497,000	6,424
MB	30-35 H&S Officers – commitment to add 20 more over the next few years.	26,044	744 (at 35 officers)	393,000	11,229
PE	5	4,787	957	80-85% workforce	
NL	17 safety advisors in Prevention Services not responsible for enforcement of OH&S.	15,874	824	209,215	12,307
NT/NU	20	3,613	180	33,501	1675
YT	U/A	2,382			
SK	U/A	33,438		338,898	
BC	U/A	185,000			

Source: Jurisdictional Email Survey – November 2007; AWCBC – March 2007; WC Acts

Costs

Occupational health and safety overall costs have been increasing since 2002. The following chart shows New Brunswick's occupational health and safety cost breakdown for five fiscal years (2002-2006). This breakdown includes a government grant of $900,000 to WHSCC intended to be directed to occupational health and safety initiatives. The amount of this grant has remained the same since 1998, although occupational health and safety costs have risen by 22.27 percent during this five-year period.

Occupational Health and Safety Cost Breakdown (in millions)

	2002	2003	2004	2005	2006	% change
Salaries and Benefits	$ 4,808,986	$ 5,129,994	$ 5,209,840	$ 5,592,195	$ 5,752,010	19.61%
Post Employment Benefits	$ 44,164	$ 47,112	$ 76,153	$ 75,961	$ 93,935	112.70%
Depreciation	$ 184,160	$ 181,266	$ 161,651	$ 154,955	$ 162,836	-11.58%
Professional Fees	$ 218,043	$ 219,403	$ 159,266	$ 178,021	$ 161,024	-26.15%
Office and Communications	$ 311,938	$ 536,875	$ 561,389	$ 606,114	$ 649,047	108.07%
Building and Computer Operations	$ 129,086	$ 141,051	$ 173,311	$ 157,440	$ 154,670	19.82%
Travel and Vehicle Operations	$ 589,834	$ 571,661	$ 579,551	$ 628,134	$ 654,710	11.00%
Education and Training	$ 136,675	$ 132,027	$ 141,210	$ 158,474	$ 116,059	-15.08%
Miscellaneous	$ 307,489	$ 294,501	$ 393,872	$ 269,429	$ 350,271	13.91%
Safety Association Funding	$ 250,000	$ 250,000	$ 250,000	$ 345,000	$ 440,000	76.00%
Total	**$6,980,375**	**$7,503,889**	**$7,706,242**	**$8,168,723**	**$8,534,563**	**22.27%**

Source: Information provided by WHSCC

The cost of Safety Association Funding has increased by 76 percent, although this cost is actually incurred by industry as a levy on their assessment rates. The largest increases have been in "Post-Employment Benefits" and "Office and Communications". There has been a 15.08 percent decrease in cost for "Education and Training".

Post employment benefits relates to a retirement supplement provided to employees. It is a sum set aside, payable upon retirement, based upon years of service. The employee may take this as a lump sum at retirement or may take early retirement for a related number of days.

The following table shows the total occupational health and safety costs paid by Canadian Workers' Compensation Boards from 2001-2005. These costs have risen 23.24 percent over the same five-year period for New Brunswick. Changes in occupational health and safety costs ranged from a 4.76 percent decrease in British Columbia to a 106.50 percent increase in Nova Scotia. The Canadian average was 18.18 percent.

Total OHS Costs Paid by Boards during Year ($000's)

	2001	2002	2003	2004	2005	% change
AB	$ 10,699	$ 11,684	$ 15,331	$ 15,853	$ 18,916	76.80%
BC	$ 44,938	$ 41,256	$ 39,518	$ 42,579	$ 42,797	-4.76%
MB	$ 6,423	$ 7,857	$ 8,289	$ 9,105	$ 9,405	46.42%
NB	$ 6,341	$ 6,730	$ 7,254	$ 7,456	$ 7,821	23.34%
NL	$ 4,843	$ 5,253	$ 5,708	$ 6,430	$ 6,501	34.23%
NS	$ 4,035	$ 4,835	$ 5,170	$ 7,642	$ 8,336	106.59%
NT/NU	$ 2,421	$ -	$ 2,570	$ 2,457	$ 3,041	26.60%
ON	$ 133,358	$ 138,115	$ 144,466	$ 160,221	$ 168,993	26.72%
PE	$ 526	$ 608	$ 616	$ 660	$ 722	37.26%
QC	$ 134,888	$ 141,249	$ 144,855	$ 145,773	$ 43,694	6.52%
SK	$ 9,803	$ 9,794	$ 11,488	$ 12,056	$ 13,096	33.59%
YT	$ 952	$ 907	$ 1,050	$ 1,097	$ 1,227	28.88%
CA	**$359,227**	**$368,288**	**$385,714**	**$411,329**	**$424,548**	**18.18%**

Source: AWCBC, Key Statistical Measures

The following table of occupational health and safety costs paid by Boards per $100 of assessable payroll, shows New Brunswick's costs have been comparable to the Canadian average during the period 2001-2005. Nova Scotia and Prince Edward Island's costs have been consistently lower than New Brunswick's and Newfoundland and Labrador's have been consistently higher. The average percentage change for all jurisdictions from 2001 to 2005 was 13 percent. New Brunswick's percentage change over the same period was 9.09 percent.

OHS Costs paid by Boards per $100 of Assessable Payroll

	2001	2002	2003	2004	2005	% change
AB	$ 0.03	$ 0.03	$ 0.03	$ 0.03	$ 0.04	33.33%
BC	$ 0.09	$ 0.08	$ 0.07	$ 0.08	$ 0.07	-22.22%
MB	$ 0.08	$ 0.09	$ 0.09	$ 0.10	$ 0.10	25.00%
NB	$ 0.11	$ 0.11	$ 0.12	$ 0.11	$ 0.12	9.09%
NL	$ 0.13	$ 0.13	$ 0.14	$ 0.15	$ 0.15	15.38%
NS	$ 0.06	$ 0.07	$ 0.07	$ 0.10	$ 0.11	83.33%
NT/NU	$ 0.19	$ -	$ 0.17	$ 0.16	$ 0.17	-10.53%
ON	$ 0.12	$ 0.11	$ 0.11	$ 0.12	$ 0.12	0.00%
PE	$ 0.06	$ 0.06	$ 0.06	$ 0.06	$ 0.07	16.67%
QC	$ 0.16	$ 0.16	$ 0.16	$ 0.15	$ 0.15	-6.25%
SK	$ 0.11	$ 0.10	$ 0.11	$ 0.11	$ 0.12	9.09%
YT	$ 0.18	$ 0.17	$ 0.18	$ 0.18	$ 0.19	5.56%
CA	**$ 0.11**	**$ 0.11**	**$ 0.11**	**$ 0.11**	**$ 0.11**	

Source: AWCBC Indicator Ratios 2007

In comparing New Brunswick to other fully integrated jurisdictions, a rough analysis suggests that the amount spent per worker in 2006 ranged from $12 in Prince Edward Island to $49 in Québec. In New Brunswick it was $24 per worker.[15]

Occupational Health & Safety Expenditures Paid by Boards

	Per $100 Payroll (2006)	Per Worker	Fully Integrated
AB	$ 0.04	$12	
BC	$ 0.08	$26	yes
MB	$ 0.10	$32	
NB	$ 0.12	$24	yes
NL	N/A		
NS	$ 0.09	$16	
NT/NU	$ 0.19	$100	yes
ON	$ 0.13	$40	
PE	$ 0.06	$12	yes
QC	$ 0.15	$49	yes
SK	$ 0.11	$30	
YK	N/A		yes
Average	$ 0.11	$35	
Avg of Merged	$ 0.12	$40	

Source: AWCBC – December 2007
(Information for Yukon and Newfoundland and Labrador not available at this time)

[15] Information provided by WHSCC.

Measurements and Results

The measurements used by WHSCC in 2006 for its Safety Goal were:

- **Measurement 1: Overall accident frequency rate; and**
- **Measurement 2: Accident frequency rate of each focus firm.**

Statistics for New Brunswick and comparisons to other jurisdictions and Canada are provided where possible.

Measurement 1: Overall accident frequency rate:

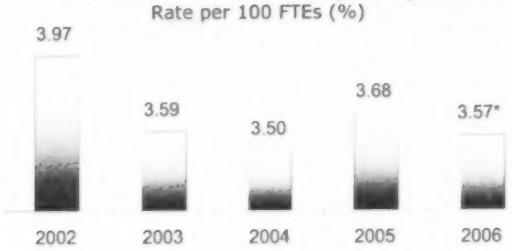
- Within the province;
- Compared to other workers' compensation jurisdictions;
- By payroll; and
- By industry sectors.

Within the province – the number of workplace accidents decreased from 3.68 accidents per 100 FTEs in 2005 to an estimated 3.57 accidents per 100 FTEs in 2006 (see following graph).

The accident frequency rate is calculated by dividing the number of claims by the number of full-time employees in a given year. FTE is defined as an employee who works the equivalent of 35 hours per week for 50 weeks of the year. [16]

Provincial Accident Frequency Rate

Rate per 100 FTEs (%)



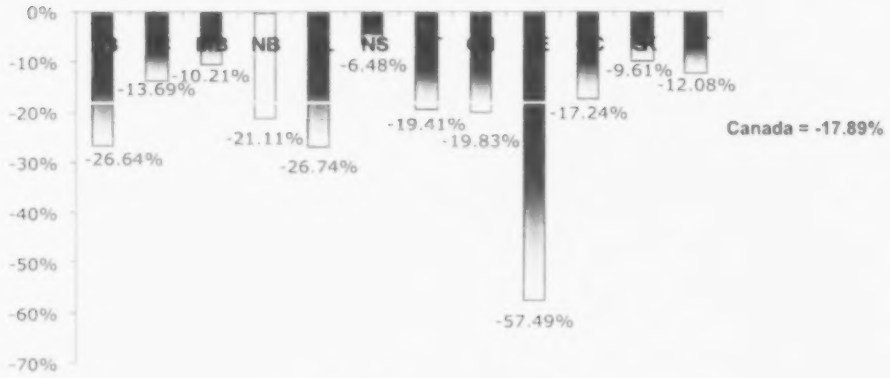
*Projected

Source: 2006 WHSCC Stakeholder Report

Compared to other workers' compensation jurisdiction (see following graph), New Brunswick's injury frequency per 100 workers of assessable employers from 2001 to 2005 (-21.11 percent) has been consistently lower than Newfoundland and Labrador, Nova Scotia, Prince Edward Island, and the national average (17.89 percent).

[16] 2006 WHSCC Stakeholder Report, p. 10.

Percentage Decrease of Injury Frequency per 100 workers of assessable employers



Source: AWCBC Key Statistical Measures

Accident frequency by industry sector per 100 full-time employees (FTEs) has declined for the following industries since 2002 in New Brunswick: Manufacturing (Light), Finance and Insurance, Government (Education and Health), Accommodation and Amusement, and Manufacturing (Metal and Machinery). The following industries saw an increase over 2002 accident frequencies per 100 FTEs: Agriculture (Natural Resources), Manufacturing (Heavy), Construction, Wholesale Trade, and Retail Trade (see following table).

New Brunswick – Accident Frequency by Industry per 100 FTEs

Industry Sector	2002	2003	2004	2005
Agriculture, Natural Resources	4.50	3.90	3.99	4.53
Manufacturing, Light	7.80	7.53	7.22	7.44
Manufacturing, Heavy	7.60	9.07	8.32	8.98
Manufacturing, Metal and Machinery	9.73	8.96	7.52	7.30
Construction	3.57	3.91	4.01	3.98
Wholesale Trade	1.21	2.57	2.50	2.58
Retail Trade	1.95	2.10	2.24	2.74
Finance and Insurance	0.97	0.83	0.69	0.87
Government, Education, and Health	3.31	3.01	2.90	2.75
Accommodation and Amusement	2.53	2.30	2.10	2.27

Source: Being Accountable: Working Toward Healthy and Safe Workplaces in New Brunswick, First Quarter Results 2007

In New Brunswick, the number of accidents per $1 million in assessable payroll continued to decrease in 2006 with 1.42 accidents per $1 million in payroll as seen in the following table.

New Brunswick – Accidents per $1M in Assessable Payroll[17]

2002	2003	2004	2005	2006
1.72	1.59	1.46	1.47	1.42

[17] Being Accountable: Working Toward Healthy and Safe Workplaces in New Brunswick, First Quarter Results 2007, Internal Data http://www.whscc.nb.ca/docs/2007-Q1_e.pdf

Measurement 2: Accident frequency rate of each:

- Focus industry over the most recent five-year period; and
- Focus firm over a five-year period based on years of involvement.

In New Brunswick, accident frequency over the most recent five-year period 2002 to 2005 per 100 FTEs - have been reduced for three of the four focus industries as seen in the following table.

New Brunswick – Accident Frequency per 100FTEs (All Accidents)

Focus Industry	2002	2003	2004	2005
Logging industry	4.56	4.03	3.83	4.34
Homes for personal and nursing care	8.32	7.11	8.04	6.84
Sawmills and planning mill products	17.65	14.71	14.15	16.30
Fish processing industry	5.20	4.81	4.96	5.65

Source: Being Accountable: Working Toward Healthy and Safe Workplaces in New Brunswick, First Quarter Results 2007

As shown in the following table, focus firms in New Brunswick show an overall average accident frequency rate decline from 16.99 accidents per 100 FTEs in 2002 to 15.17 in 2005. (Results reported for the first quarter of 2007, show an overall decline of 12.94 for 2006.)

Focus Firms	2002	2003	2004	2005
2002 Firms	21.25	15.12	22.82	14.79
2003 Firms	15.31	14.25	17.11	14.65
2004 Firms	10.91	13.92	15.68	17.53
2005 Firms	12.70	13.01	10.80	16.26
2006 Firms	-	12.28	12.65	14.00
Average	16.99	13.89	16.91	15.17

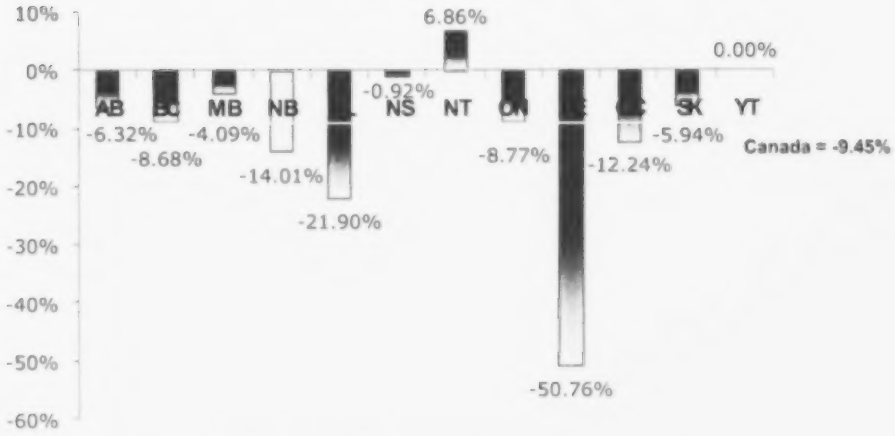
Source: Being Accountable: Working Toward Healthy and Safe Workplaces in New Brunswick, First Quarter Results 2007

Additional Comparisons

New Brunswick's percentage change of lost-time claims for both assessed and self-insured employers decreased by 14.01 percent (see following graph). This was a greater reduction of lost-time claims than the Canadian average of 11 percent.

As New Brunswick has a three-day waiting period, the number of lost time claims given in the AWCBC January 2007 report may not reflect every lost time injury for the province.

Percentage Change of Lost-Time Claims (2001-2005)
(Assessable and Self-Insured Employers)



Source: AWCBC Key Statistical Measures

From the data provided in the following two tables, there was a greater percentage change for new lost-time claims for assessable employers than self-insured employers. New Brunswick had a greater decrease in new lost-time claims for both self-insured (-11.83 percent) and assessable (-14.51 percent) employers than Canada (-3.98 percent, -9.87 percent respectively).

Number of New Lost-Time Claims for Self-Insured Employers

	2001	2002	2003	2004	2005	% change
AB	206	853	768	856	845	310.19%
BC	3,948	2,592	2,112	2,076	1,985	-49.72%
MB	1,821	1,719	1,810	1,898	1,998	9.72%
NB	964	834	877	850	850	-11.83%
NL	377	345	418	342	389	3.18%
NS	781	591	667	645	639	-18.18%
NT/NU	29	36	18	26	15	-48.28%
ON	15,109	14,579	15,282	14,865	15,850	4.90%
PE	169	134	115	81	72	-57.40%
QC	2,763	2,531	2,776	2,659	2,501	-9.48%
SK	387	397	424	363	354	-8.53%
YT	N/A	N/A	N/A	N/A	N/A	N/A
CA	**26,554**	**24,611**	**25,267**	**24,661**	**25,498**	**-3.98%**

Source: AWCBC Key Statistical Measures.

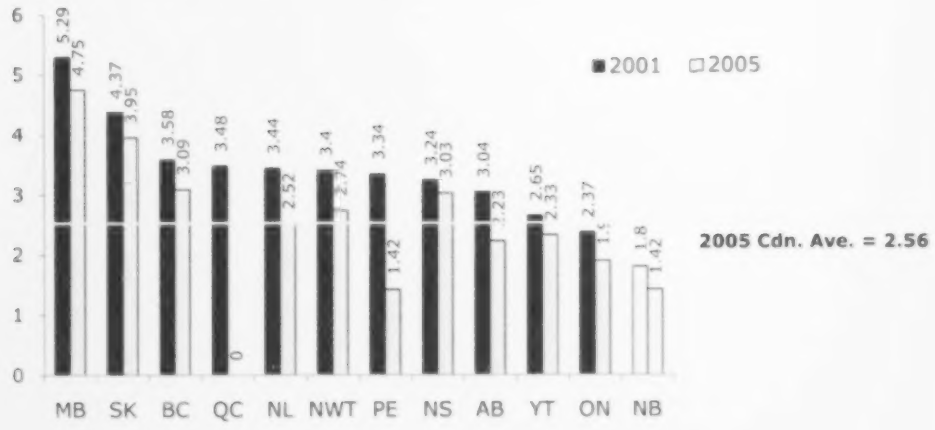
Number of New Lost-Time Claims for Assessable Employers

	2001	2002	2003	2004	2005	% change
AB	38,549	37,573	36,567	35,113	35,460	-8.01%
BC	62,128	56,938	54,834	56,213	58,355	-6.07%
MB	16,723	16,200	15,776	15,362	15,787	-5.60%
NB	4,198	3,851	3,727	3,335	3,589	-14.51%
NL	5,796	5,172	4,829	4,492	4,432	-23.53%
NS	8,301	8,133	8,182	8,528	8,359	0.70%
NT/NU	860	932	918	791	935	8.72%
ON	83,250	80,989	77,952	75,532	73,884	-11.25%
PE	1,610	1,341	1,126	956	804	-50.06%
QC	110,124	107,713	104,384	101,550	96,566	-12.31%
SK	14,678	15,226	14,711	13,517	13,816	-5.87%
YT	445	495	442	452	445	0.00%
CA	**346,662**	**334,563**	**323,448**	**315,841**	**312,432**	**-9.87%**

Source: AWCBC, Key Statistical Measures.

Lost-time accident frequency rates for all jurisdictions across Canada declined during the five-year period 2001 to 2005 as depicted in the following graph. In New Brunswick, the accident frequency rate declined 21 percent from 2001 to 2005 and remains the second lowest in Canada.

Lost Time Accident Frequency Rate (%)

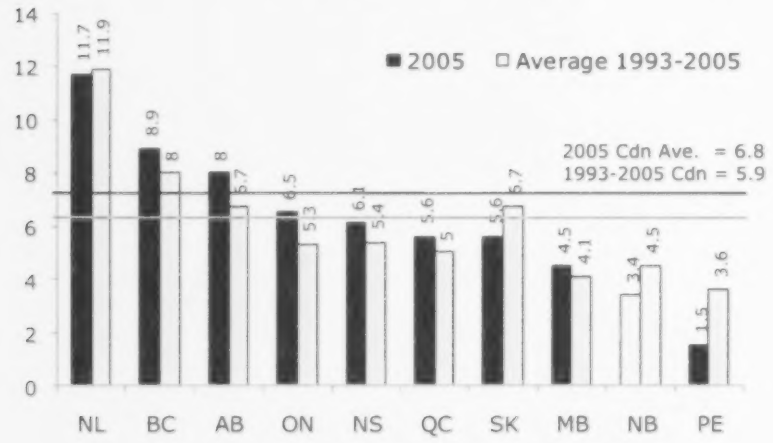


Source: AWCBC Comparison 2001 & 2005

Work-Related Fatalities

Work-related death incidence rates differ significantly across Canada as noted in the graph below. These statistics are not affected by waiting periods (three-day wait). Over a 13 year period (1993-2005), Newfoundland and Labrador had the highest fatality rate with an average of 11.9 fatalities per 100,000 workers, twice the national average of 5.9 for the same period. British Columbia, Alberta, and Saskatchewan had the next highest. New Brunswick's fatality rate during this period was among the lowest at 4.5 work-related deaths per 100,000 workers.

Incidence of Workplace Fatalities per 100,000 workers (%)



Source: AWCBC Key Statistical Measures

Discussion of Key Issues

In New Brunswick, certain groups of industries such as the Construction and the Forestry Sectors, the Canadian Federation of Independent Business, as well as individual companies in co-operation with WHSCC and labour groups, have created programs resulting in greatly reduced workplace injuries. Unfortunately not all sectors of industries embrace the same culture and much more needs to be done.

Changing the culture, in the view of the Independent Review Panel, begins with educating the young. The Panel believes that safety education should be an integral part of the school curriculum.

The Workplace Health, Safety and Compensation Commission's social marketing campaign that "all occupational diseases and accidents are

preventable" recognizes the cultural shift that needs to occur in the workplace. The Internal Responsibility System plays an important role in creating this cultural and attitudinal shift in the workplace that accidents are preventable and zero lost time is possible even in industries that are hazardous or may not have a fixed place of work.

New Brunswick's legislation is premised on the Internal Responsibility System and its centrepiece is the right to know about workplace hazards, the right to participate in solving health and safety problems, and the right to refuse dangerous work. It is consistent with the Canadian model of occupational health and safety legislation. The underlying principle being that both the employer and the worker are responsible for a safe workplace. The role of WHSCC is at times a facilitator and equally an enforcer.

During the public consultations, attention was paid by stakeholders to joint occupational health and safety committees and needs special mention in the Panel's Report. These committees are essential to the proper rapport and understanding between employer and worker, should be practical, and not so formal as to be bureaucratic.

The Panel heard some suggestions that the *Occupational Health and Safety Act* be amended to provide that a JOHS committee "shall" perform certain functions. It is the Panel's view however, that the use of the word "shall" would impose a potential liability/enforcement obligation on committees not conducive to committee membership, nor consistent with their mandate.

The Independent Review Panel notes that the legislation was amended in March 2007 adding: mandatory training for joint health and safety committee members; the employer granted leaves to committee members to attend the educational programs with pay at his or her rate and other benefits to which he or she would be entitled; and the establishment and composition of committees for project sites.

One day during the consultation process, the Independent Review Panel met with two stakeholder groups. One group, where workers employed outside and under extreme conditions, embraced the culture of prevention of injuries. The other group, working in a controlled environment, stated accidents were inevitable in their industry. The difference in the two mind sets could not be more striking. The Panel believes the Commission needs to motivate stakeholders to develop a culture of safe and healthy workplaces in which all accidents are seen as preventable.

Annually, the Commission receives $900,000 from the Provincial Government, reduced from a high of $1.677 million in 1995 which is generally used to support occupational health and safety initiatives. This represents a shrinking percentage of occupational health and safety costs. From 2002 to 2005, the overall occupational health and safety costs have increased by 22.27 percent. In 2002, the Provincial Government's share of total occupational health and safety costs represented 12.89 percent. In 2006, this same contribution

represented 10.55 percent of the total occupational health and safety costs.

The Independent Review Panel acknowledges that lost-time claims in New Brunswick for self-insured employers have decreased less than one percent compared to a decrease of more than 20 percentage points from 2000 to 2005. The Panel therefore suggests increasing the current government contribution to cover the cost of occupational health and safety services for self-insured employers and those not covered under the *Workers' Compensation Act*.

The Panel is in receipt of a draft report from the Commission entitled *Report to the WorkSafe Evaluation Committee from the Occupational Health and Safety Opportunities Sub-Committee* expected to be presented to the full Board. A sub-committee was struck by the Board and met for a year to examine opportunities for improvement of occupational health and safety prevention activities by the Commission. It is expected this will result in further prevention initiatives.

Recommendation #16

The Independent Review Panel recommends the WHSCC actively pursue programs in consultation with stakeholders to achieve the governing goal of an improved safety culture and a zero tolerance of workplace injuries in New Brunswick.

Recommendation #17

The Independent Review Panel recommends that occupational health and safety be an integral part of the New Brunswick school curriculum.

Recommendation #18

The Independent Review Committee recommends that the Commission's focus on youth be expanded to new employee orientation, new employee job safety, and seniors returning to employment, with an emphasis on the promotion of safety for anyone starting a new job.

Recommendation #19

The Independent Review Committee recommends that the Commission explore opportunities to provide funding for the development and offering of training programs and resources by external agencies, including cooperative programs with the New Brunswick Federation of Labour, Canadian Federation of Independent Business, and others.

Recommendation #20

The Independent Review Committee recommends the allocation of resources by the Commission for the development of web based safety training programs with focus areas respecting legislative requirements, management responsibilities, and orientation programs for new workers.

Recommendation #21

The Independent Review Panel recommends the WHSCC expand safety association programs similar to the Construction and Forestry industries model to other industry sectors, including health care.

Recommendation #22

The Independent Review Panel recommends increasing the provincial government grant to WHSCC to cover costs of non-assessed employers, including self-insured employers, to reflect cost of the service and to allow for additional inspections for self-insured and non-insured employers.

Recommendation #23

The Independent Review Panel recommends the Commission review the compliance and enforcement tools available to it, including additional inspections, stop-work orders, ticketing, and demerit fines in workplaces requiring increased attention, as well as incentives for undertaking effective prevention programs.

Recommendation #24

The Independent Review Panel acknowledges that the introduction of new industries coming to New Brunswick and the expansion of some existing industries may present special prevention challenges and recommends the Commission appropriate the resources required to address these industries and projects.

Mandate Question Overview

The Independent Review Panel was asked to assess how well the Workplace Health, Safety and Compensation Commission compares to other Canadian jurisdictions in addressing prevention of injuries, including occupational health and safety education, resources allocated to education, and results achieved, such as measures of accident frequency.

The Panel's research indicates, based on published benchmarks such as the injury frequency rate, lost time claims, and fatality

rates that New Brunswick compares very well to other jurisdictions. In New Brunswick, the accident frequency rate declined 21 percent from 2001 to 2005 and remains the second lowest in Canada. Over a 13 year period (1993-2005), New Brunswick's fatality rate was among the lowest at 4.5 work-related deaths per 100,000 workers.

Having reviewed practices in all jurisdictions, it is very difficult to compare and to determine best practices within the scope and timeframe of the Panel's mandate. This is further complicated by the fact that the responsibility for prevention and enforcement may be administered differently in each jurisdiction.

The Independent Review Panel, however, is convinced that all workplace injuries are preventable. Aside from the human costs, injuries result in costs that could be spent on improving benefits and/or making New Brunswick industries more competitive.

The Independent Review Panel believes that prevention is of paramount importance and is a key factor in cost savings for the New Brunswick Workplace Health, Safety and Compensation Commission. The objective of the Panel's recommendations is to make New Brunswick the model for the prevention of injuries.

It is recognized that the only way to improve costs and to therefore have the capacity to either improve benefits and/or lower assessment rates is to contain accidents and have more timely returns to a safe workplace.

How then, can the New Brunswick workplace become an occupational health and safety model for all of Canada? How does New Brunswick create a culture of zero accident tolerance in the workplace? How can accident causes be controlled? Ensuring that the workplace is mechanically and physically safe is the first priority. Education and enforcement are other key components.

The Occupational Health and Safety Act spells out, in a broad sense, the requirements and conditions for a safe workplace. It is the wide-spread acceptance of the core set of policies and beliefs that is inherent in the Act that is essential for real progress to be made on the prevention front.

Of necessity, the Independent Review Panel's mandate required it to focus on strategic recommendations. The Panel suggests that while statistics show that New Brunswick is doing very well, New Brunswick must still strive to adopt or incorporate best practices nation-wide, making it a leader in occupational health and safety.

Coverage and Benefits

How well does the Workplace Health Safety and Compensation Commission's legislated scope of coverage compare to other Canadian jurisdictions, including: number of workers covered; benefits offered to injured workers; treatment of workers while on benefits, and back-to-work activity reports?

Coverage and Benefits

This section discusses the coverage and benefits of New Brunswick's workplace health, safety and compensation system, the mandate question of the Independent Review Panel's Terms of Reference - How well does the Workplace Health Safety and Compensation Commission's legislated scope of coverage compare to other Canadian jurisdictions, including: number of workers covered; benefits offered to injured workers; treatment of workers while on benefits, and back-to-work activity reports?

Background

The Meredith Principles, the underpinnings of today's Workers' compensation laws that are especially relevant to coverage and benefits include:

1. **No-fault compensation:** Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.
2. **Collective liability:** The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
3. **Exclusive jurisdiction:** All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims. The board is not bound by legal precedent; it has the power and authority to judge each case on its individual merits.

Chief Justice William Meredith said:

> A just compensation law based upon a division between the employer and the workman of the loss occasioned by industrial accidents ought to provide that the compensation should continue to be paid as long as the disability caused by the accident lasts, and the amount of compensation should have relation to the earning power of the injured workman.
>
> To limit the period during which the compensation is to be paid regardless of the duration of the disability, as is done by the laws of some countries, is, in my opinion, not only inconsistent with the principle upon which a true compensation law is based, but unjust to the injured workman for the reason that if the disability continues beyond the prescribed period he will be left with his impaired earning power or, if he is totally disabled without any earning power at a time when his

> need of receiving compensation will presumably be greater than at the time he was injured, to become a burden upon his relatives or friends or upon the community.[1]

Meredith pointed out that the division of the burden between employee and employer included:

> In order that it may be seen whether the division of the burden between the employer and workman is unfair, it may be well to point out how it will be divided under the provisions of the proposed law. The workman will bear (1) the loss of all his wages for seven days if his disability does not last longer than that...[2]

The 1980 Boudreau Report reaffirmed the principles underlying the Canadian and New Brunswick compensation systems including:

- Workers' compensation should cover all workers;
- Compensation should be a substitute for wages lost to the injury, up to certain maximums;
- Costs should be definite and the employer should not be subject to further costs and liabilities;
- No person should have more spendable income when they are not working than when they are working; and
- Compensation should not reduce an injured worker and the worker's family to poverty or make them a charge on society.[3]

What We Heard...

The Independent Review Panel heard numerous and directly opposing views about coverage and benefits, many of them related to the 1993 reforms.

With respect to coverage, the Panel heard there should be universal coverage; coverage for volunteers; and the ability for employers to apply for voluntary coverage for those currently excluded. The Panel also heard that independent owner/operators of trucks should be able to have their own WHSCC coverage.

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[1] The Meredith Report, p. 14.
[2] Ibid, p. 16.
[3] Boudreau Report "Report of the Workers' Compensation Study Committee", February 1980, pp. 97-98.

...What We Heard...

Some briefs called for the elimination of the three-day waiting period, while others wanted to maintain it; still others had differing views on whether or not to have the three-day wait for police officers and firefighters. It was advocated that the employer should be required to compensate an injured worker for the day of injury provided the worker reports the injury that day. It was also mentioned New Brunswick follow the lead of the Manitoba Legislative Review proposal, as well as Québec's *Act Respecting Industrial Accidents and Occupational Diseases* that require employers to continue the injured workers on the payroll for the first two weeks of any compensation claim involving loss of earnings subject to later reimbursement.

The percentage and level of wage-loss benefits were issues. Some wanted to maintain the level at 85 percent of average net earnings; others wanted to increase it to 90 percent; some stakeholders suggested the removal of maximum compensable earnings. The Panel also heard there should be minimum compensable earnings.

Representation was made to allow for employer top-ups to pre-accident earnings, while other stakeholders disagreed.

The Panel heard much about deeming, specifically deeming for non-existent jobs and that the criteria for determining and awarding suitable employment opportunities must be realistic. Many opposed the overall deeming process. Others wanted to see the following changes to legislation: replace "suitable employment" in Section 42.1(1) of the *Workers' Compensation Act* with "suitable and available employment" and change the definition of loss of earnings to "net average earnings, less the net average earnings that the worker earns or is capable of earning in suitable and available employment after the injury. We heard opposing viewpoints on whether to keep Section 38.1(1) as is or replace "the earnings the worker is estimated to be capable of earning at a suitable occupation after sustaining the injury" with "the earnings that the worker is receiving from employment."

Long-term disability and annuities were other areas where views were expressed. The Independent Review Panel heard that workers who are totally disabled beyond a two-year period should receive weekly compensation benefits equal to at least 50 percent of New Brunswick's average weekly earnings. The Panel heard that annuity benefits to long-term claimants should be based on eight percent of compensation paid; that claimants should be allowed to take a lump sum payment rather than purchasing an annuity if the amount set aside is below a certain level; and that the amount set aside not be left fully in the Pension Fund but that there be a minimum payout of five years to the estate of the worker should he/she die without surviving dependents.

...What We Heard

There were conflicting views as to whether Canada Pension Plan Disability (CPPD) benefits should be deducted from or added to the workers' compensation benefits and whether or not it should be mandatory to make application for CPPD.

Other issues related to benefits heard by the Independent Review Panel were: to make work-related stress compensable; provide wage and benefits protection for all workers affected by health and safety work stoppages under the *Occupational Health and Safety Act;* better explanation of benefit entitlements and changes in policies to claimants by case managers; base any measures considered to deal with occupational disease on sound science; and there should not be an automatic assumption of occupational disease.

New Brunswick Situation

...compensation system is funded primarily through assessments on employers.

The WHSCC administers no-fault workplace accident and disability insurance. The compensation system is funded primarily through assessments on employers.

During the 1970's and 1980's, the Canadian systems moved from awarding benefits according to loss of body part or function to a wage-loss system. Most jurisdictions underestimated the cost of benefits primarily due to the complexity of projecting appropriate assessment levels for employers. In 1985, New Brunswick had an unfunded liability of $50 million. By 1990, the projected unfunded liability for 1992 was in excess of $100 million.

To address this perceived crisis, a joint labour-management committee was established to make recommendations on how to address the unfunded liability. The 1993 changes included:

- Reducing wage recovery from 90 percent of average net earnings to 80 percent;
- Restricting employers from "topping-up" compensation benefits; and
- Introducing a three-day waiting period (reimbursable after 30 days on claim).

In 1996, the WHSCC established a second joint committee, to examine the service benefits and assessment issues facing the Commission as it approached fiscal stability. It was at the end of 1996 that the Commission moved from an unfunded liability to being fully funded at 101 percent.

The following changes to the New Brunswick system in 1998 were a result of recommendations from the second joint committee:

- Increasing wage recovery from 80 percent of average net earnings to 85 percent;
- Removing the three-day waiting period when an injured worker is hospitalized and where the injury is recurrent; and
- Reimbursing the three-day wait after 20 days on claim.

Since these changes were implemented, the Accident Fund balance has fluctuated over the 10–year period 1997 to 2006 from a deficit of $60.154 million in 2003 to a surplus of $102.472 million in 2006 as indicated in the following table.

New Brunswick Ten Year Historical Accident Fund Balance

Year	Accident Fund Balance (000s)
1997	12,823
1998	31, 705
1999	49,035
2000	29,101
2001	(6,573)
2002	(41,666)
2003	(60,154)
2004	(9,828)
2005	20,343
2006	102,473

Source: WHSCC Annual Reports 1998-2006 – Financial Statements

The importance of benefits for injured workers is emphasized in the new *2007-2012 WHSCC Strategic Plan & Risk Assessment* document. There are a number of initiatives relating to benefits including:

- Continuously evaluating the competitiveness of employee wages and benefits;
- Managing a return to work and disability management program for employees;
- Providing clients who have a work restriction with the opportunity to learn new skills and preparing them to re-enter the workforce;
- Partnering with the Government of New Brunswick to educate workers, employers, and the public on the duty to accommodate requirements; and
- Centrally adjudicating claims to reduce the number of days it takes for an injured worker to receive their first benefit payment.

Coverage

Inclusion/Exclusions

According to Statistics Canada there were 355,400 persons employed in the labour force in New Brunswick in 2006, slightly less than in 2005. With 93.9 percent of New Brunswick workers being covered by the *Workers' Compensation Act,* this meant 333,720 workers were covered by legislation and approximately 21, 680 workers were excluded from coverage as noted in the table below. In 2005, 94.5 percent of workers were provided with coverage under the *Act*.

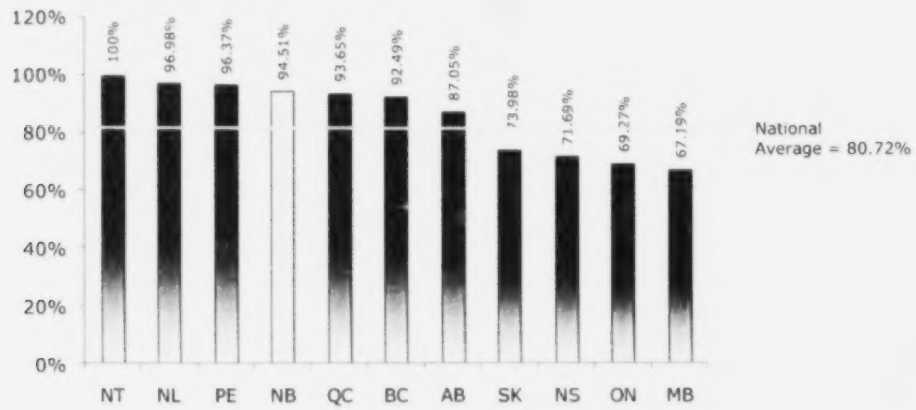
In New Brunswick	2005	2006
Coverage under legislation	94.51%	93.9%
Employed in labour force	350,500	355,400
Number workers covered	331,258	333,720
Number of workers excluded from coverage	19,242	21,680

The legislative definition of a worker, subject to certain exclusions, includes: a learner, emergency service worker, volunteer firefighter, and managers including executive officers. It includes all workers covered by legislation - assessed employers and self-insured employers, i.e., the Government of New Brunswick under the *Workers' Compensation Act* and includes the military, RCMP, and others under the *Government Employees Compensation Act*.

New Brunswick remains one of the jurisdictions with very high percentage coverage...

As shown in the following graph, the percentage of the workforce covered in other jurisdictions in 2005 ranged from 67.19 percent in Manitoba to 100 percent in Northwest Territories and Nunavut. New Brunswick remains one of the jurisdictions with very high percentage coverage and is approximately 13 percent higher than the Canadian average of 81.08 percent.

Percentage of Workforce Covered



Source: AWCBC 2005 Key Statistical Measures

Employers who register for compensation coverage for their workers are either required to do so by the various *Workers' Compensation Acts* (compulsory coverage) or may register voluntarily.

With the exception of Northwest Territories/Nunavut which provides universal coverage, all jurisdictions define compulsory coverage through legislation or regulation by either:

- Listing all occupations or industries that *must* register for coverage, thereby excluding those not listed; or
- Listing all occupations or industries *not required* to register for coverage, thereby including all others in compulsory coverage.

New Brunswick falls within the latter category. Employers with less than three workers or employers in the fishing industry with less than 25 workers are not required to register for coverage. All others must register.

Most jurisdictions in Canada, except New Brunswick and Québec have a legislative provision that permits coverage based on various considerations that typically must be approved by the Board for sole proprietors/independent operators (see table below).

Does Legislation provide for Coverage of Independent Operators?

AB	Yes Section 5(1)
BC	Yes Section 2(2)
MB	Yes Section 75(1)
NB	No
NL	Yes Section 41
NWT/NU	Yes Section 9 (2)
NS	Yes Section 4 (2), 4(3), 4(4)
ON	Yes Section 12(1) 1; 12(1)2
PE	Yes Section 4
QC	No
SK	Yes Section 12(1)
YT	Yes Section 4 (2).

Source: Canadian Jurisdictions WC Acts

In all jurisdictions except Ontario, the Board can declare certain volunteers "workers" under the *Act*. In New Brunswick, once mandatory or voluntary coverage is established, personal coverage may be requested for a non-salaried officer of a limited or incorporated company; a proprietor, partners, and spouses of a proprietor or partner. The coverage requested may not be less than $12,000 nor greater than the maximum annual assessable earnings ($53,200 in 2007).

In New Brunswick, employers not subject to the *Act* may register voluntarily with the Commission when they have at least one worker

and a minimum of $3,000 in assessable earnings. Volunteers considered workers under the *Workers' Compensation Act* in New Brunswick include firefighters, emergency services workers, any person assisting a peace officer, ambulance attendants/drivers, and volunteer/auxiliary police officers. However, volunteers working at fundraising events or crowd control are not covered.[4]

New Brunswick workers who are employed outside of New Brunswick are also covered under the *Workers' Compensation Act* if the following applies:

- Worker's usual place of employment is in New Brunswick;
- Worker is working outside of New Brunswick for a specified time at the request of the employer;
- Employer registered with Commission and operates within New Brunswick;
- Worker provides written request to Commission for coverage; and
- Worker is paid through the New Brunswick employer's payroll.

The WHSCC pays benefits to volunteers based on loss of earnings from their primary employment. Persons that assist a peace officer are entitled to loss of earnings benefits even if there is no lost income. The loss of earnings would be based on the average earnings of a police officer.

Examples of volunteer coverage:

- Volunteer firefighters are covered in every jurisdiction except Northwest Territories and Nunavut and Québec;
- Volunteer police are only covered in Manitoba, New Brunswick, Ontario, and Yukon;
- Volunteer ambulance drivers/attendants are covered in every jurisdiction except Northwest Territories and Nunavut, Nova Scotia, Prince Edward Island, Québec, and Saskatchewan; and
- Volunteers who prevent/combat an emergency are covered in every jurisdiction except British Columbia, Newfoundland and Labrador, and Saskatchewan.

Manitoba, Nova Scotia, and Ontario exclude industries/occupations that are not mentioned in the Acts. Examples of common exclusions for compulsory employer coverage are:

- Alberta: farming
- Manitoba: farming, teaching
- Nova Scotia: farming, educational institutions, financial services
- Ontario: financial institutions
- Prince Edward Island: fishing
- Saskatchewan: farming, teaching

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[4] Information Document; WHSCC Discussion Paper - Workers' Compensation Coverage for Volunteers, October 2002.

New Brunswick and Nova Scotia are the only jurisdictions that exclude employers based on employer size, although Nova Scotia also excludes industries by regulation.

Discussion of Key Issues

During the Panel's consultations, various stakeholders were identified under the question of exclusion, with fisheries and three-worker rule being of greatest significance. The Independent Review Panel heard nothing with respect to professional athlete and domestic worker exclusions.

It is anomalous in comparison to other jurisdictions to have one specific industry excluded. While the Independent Review Panel received no representation from either of the stakeholder groups in the fishing industry, the Panel believes the Commission should engage in a consultation process with the industry to determine whether it should be covered.

In 2006, New Brunswick had coverage of 93.9 percent of workers...

In 2006, New Brunswick had coverage of 93.9 percent of workers despite the three-worker rule (less than 25 workers for the fishing industry). Morneau Sobeco provided the Independent Review Panel with a summary of the impacts if the Commission was to offer universal coverage:

> Extending coverage to about 19,000 additional workers would not be expected to have a material impact on the finances of the workers compensation system because additional assessments would be collected to cover these workers. As long as the claims experience for these workers is in line with the assessments paid, the system should not experience any financial gains or losses as a result of such a change.[5]

The Independent Review Panel heard from a group of people who are independent operators that have asked for coverage through the WHSCC. Morneau Sobeco further stated that if coverage were extended to include self-employed individuals:

> There would be a need to develop rules around the determination of earnings levels, the treatment of late registrants and the administration of claims for self-employed individuals who failed to register before being involved in an accident. This group could present an added cost risk due to the challenge in registering the accounts on time, the possible large swings in wages reported and the challenges around return to work efforts (for example., a self-employed individual's

[5] Morneau Sobeco, Report on Certain Coverage, Benefit Provisions and Operational Aspects of Current System, January 2008, p. 5.

business may no longer be viable after an extended absence from work).[6]

A recent decision by the Appeals Tribunal has implications for the three-worker rule. The decision will allow a previously assessed employer who falls below the three-worker threshold to make an "after the fact" claim for a return of their premiums.

It is not a question of availability of coverage, given the *Act* that employers with one worker and earnings of $3,000 can obtain voluntary coverage. This seems to the Independent Review Panel a minimal requirement. Rather, it is a question of whether or not coverage should be compulsory. This presents a different set of issues. How could WHSCC effectively consult with employers with less than three workers or sole proprietors/independent contractors?

The WHSCC has addressed the issue of expansion of coverage on a continuing and regular basis. After a comprehensive review in 2003, the Board of Directors decided against the expansion of coverage.

...no stakeholder group should be added without consultation by the WHSCC...

The Independent Review Panel believes that no stakeholder group should be added without consultation by the WHSCC and that universal coverage should remain a topic of ongoing consideration.

The Panel heard representation from various groups about non-profit and charitable organizations, but no briefs were submitted from these organizations. The Panel would encourage the Commission to examine a process to permit non-profit and charitable organizations to purchase optional coverage for their volunteers based on risk and prevention models for volunteers. However, this should not be instituted without a rigorous evaluation of the impact on this employer-funded insurance scheme.

Recommendation #25

The Independent Review Panel recommends that the Commission engage in consultations with the fishing industry to determine whether that industry should continue to be exempt from mandatory coverage. Any extension of coverage should only occur after employers and workers in this industry have had a full and free opportunity for consultation with the WHSCC.

Recommendation #26

The Independent Review Panel recommends that the Commission be proactive in promoting the availability of voluntary coverage for small employers.

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[6] Morneau Sobeco, Report on Certain Coverage, Benefit Provisions and Operational Aspects of Current System, January 2008, p. 6.

Occupational Diseases

Occupational diseases continue to be a significant issue for all compensation boards in Canada.[7] In New Brunswick, it represents one to three percent of claims accepted by the Commission. An accident as defined by the *Workers' Compensation Act* takes place suddenly and harm is generally perceived immediately. For an occupational disease, the effect of exposure is typically perceived over a period of time.

It is estimated that occupational diseases represented approximately one half of the total of workplace-related fatalities that occurred in Canada in 2005.[8] A report released in October 2005 by the Canadian Centre for Occupational Health and Safety (CCOHS) noted "deaths due to work-related disease increased steadily over the past two decades". Despite this increase, recognizing and preventing work-related diseases continues to be a challenge because of:

- The complexities involved in linking work and health issues;
- A limited understanding of exposure-effect relationships;
- Long latency periods; and
- Limited disease reporting and data collection. [9]

In New Brunswick, occupational diseases represent one to three percent of claims accepted by the Commission and $1 to $4 million of annual claim costs of $98 to $114 million. Claims accepted by other jurisdictions show that there are 768 occupational diseases not yet found in WHSCC's list of previously accepted claims.

The Board of Directors, as a response to the risks associated with occupational diseases, requested a comprehensive study "to determine if the Commission's current occupational disease liability is sufficient, as well as to identify potential risks to the Commission."[10]

The Occupational Disease Study showed:

> That only 1/3 of disease claims that could be filed with the Commission are actually filed. Morneau-Sobeco estimates that the current liability reserve is adequate to cover a short-term increase in that ratio and that this should be monitored in the future.
>
> Although difficult to measure, the actuary estimates that there will be an increase in the number of new diseases (primarily cancers) over the next 20 years (to an estimated 10 to 16 new claims in 2025) and that the current liability reserve is adequate to cover a short-term increase and that this should be monitored in the future.[11]

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[7] Association of Workers' Compensation Boards of Canada, Strategic Issues -Top Three Issues in Workers' Compensation Jurisdictions; Association of Workers' Compensation Boards of Canada (2005). Emerging Issues for Workers' Compensation, 2003.
[8] Centre for the Study of Living Standards, Five Deaths a Day: Workplace Fatalities in Canada, 1993-2005, 2006.
[9] Canadian Centre for Occupational Health and Safety, Recognizing and Preventing Occupational Disease: Strategies and Recommendations from Canadians, 2005.
[10] WHSCC Information Document, p. 56.
[11] WHSCC Report on Occupational Disease 2005-2006, pp. 5-6.

Occupational Cancers and Firefighters

As of mid 2006, some jurisdictions had adopted presumption legislation for firefighters including British Columbia, Alberta, Manitoba, Saskatchewan, and Nova Scotia although there may be certain conditions that must be met, i.e., Manitoba firefighters must work a minimum of 15 years with regular exposure to qualify for certain identified cancers.

Québec, by contrast, has determined that insufficient evidence exists. Scientific literature relating some cancers to the occupation of firefighting is suggestive but not conclusive.

An amendment to Ontario's *Workplace Safety and Insurance Act*, 1997 (WSIA), received Royal Assent on May 4, 2007 allowing the government to make regulations affecting Ontario's full-time, part-time, and volunteer firefighters and fire investigators.[12]

The Ontario government has now introduced a regulation for full-time firefighters that identifies and sets out the conditions and restrictions in order for each of eight types of cancer (see following chart), as well as heart injuries suffered within 24 hours of fighting a fire or participating in a training exercise involving a simulated fire emergency, to be presumed to be work-related, unless shown otherwise.

Cancer / Illness (Ontario)	Criteria – Years of Service
Brain Cancer	10 years
Bladder Cancer	15 years
Kidney Cancer	20 years
Colorectal cancer	10 years (diagnosed prior to 61st birthday)
Non-Hodgkin's lymphoma	20 years
Leukemia (certain types)	15 years
Ureter cancer	15 years
Esophageal cancer	25 years
Heart injury	Within 24 hours of fighting a fire or participating in a training exercise involving a simulated fire emergency

Firefighters in New Brunswick, including volunteer firefighters, are covered under the *Workers' Compensation Act* although until recently they had not been covered through a presumption clause. On December 20, 2007 Bill 12, *An Act to Amend Workers' Compensation Act,* received Royal Assent. The presumption legislation includes:

> **85.1**(2) Where a worker who is or has been a firefighter suffers from a disease prescribed by regulation, the

[12] http://www.labour.gov.on.ca/english/news/2007/07-79b.html

disease is presumed to be an occupational disease arising out of and in the course of employment as a firefighter, unless the contrary is proven.
85.1(3) The presumption in subsection (2) applies only to a worker who has been employed as a firefighter for a minimum period established by regulation and who has been regularly exposed to the hazards of a fire scene, other than a forest fire scene, throughout that period of employment.

As of the writing of this Report, no regulations have been issued.

Discussion of Key Issues

The Independent Review Panel commends the WHSCC on its proactive approach on occupational diseases and acknowledges the Commission's report entitled *Report on Occupational Disease Study 2005-2006*.

To maintain the integrity of the system, the Panel suggests that "dominant cause" remain the primary test for adjudicating occupational disease claims so as to be appropriately prepared to address occupational disease claims when they arise.

Mental Stress

As seen in the following table, many jurisdictions including New Brunswick, allow workplace or occupational stress to be compensable only when there is "an acute reaction to a traumatic event".

Workplace / Occupational Stress

AB	Yes – Sect. 24(1)
BC	Yes – Sect. 5.1
MB	Only for "acute reaction to a traumatic event."
NB	Only for "acute reaction to a traumatic event."
NL	Only for "acute reaction to a traumatic event."
NT/NU	Not legislated. Policy provides guideline – limited
NS	Only for "acute reaction to a traumatic event."
ON	Only for "acute reaction to a traumatic event." Policy allows for traumatic mental stress arising from criminal acts and harassment, cumulative effect, actual harm or threats to co-worker, workers' family or others.
PE	Only for "acute reaction to a traumatic event."
QC	Psychological diseases must be related to an "unforeseen and sudden event."

Workplace / Occupational Stress

SK	"Any disablement' which arises out of and in the course of employment. Policy – claimant must show they suffered an emotional "breakdown" due to stressful nature of their work to be eligible for compensation.
YT	Yes. Sect. 117 – definition of disability. Board has power to provide compensation for all work-related physical or psychological disabilities.

Source: AWCBC

Discussion of Key Issues

The Independent Review Panel heard differing views from stakeholders about making work related stress compensable. The Panel believes that the current legislative requirement for workplace or occupational stress to be compensable is consistent with the majority of other Canadian jurisdictions and it does not recommend any changes at this time.

Benefit Comparisons to Other Canadian Jurisdictions

Benefits in New-Brunswick

Monies paid to injured workers by the Workers' Compensation Boards are widely referred to as workers' compensation benefits.

In New Brunswick, under the *Workers' Compensation Act* compensation benefits include:

- Payment for time lost from work (loss of earnings benefits);
- Medical treatment and health care expenses;
- Transportation allowances;
- Personal Care allowances;
- Long-term disability benefits;
- Permanent physical impairment award;
- Benefits to dependents of fatally injured workers; and
- Assistance toward funeral expenses.[13]

Recent improvements to benefits in New Brunswick include new policies on return to work incentives and conditions for entitlement relating to hearing loss.

Satisfaction with Benefits

In New Brunswick, a satisfaction survey by Omnifacts Bristol Research indicated that in general both injured workers and registered employers were satisfied with the amount of benefits provided to

[13] http://www.whscc.nb.ca/wrk7_e.asp - understanding your compensation benefits.

workers, although satisfaction declined slightly in 2006. On the other hand, the stakeholders' perception of the satisfaction of injured workers and registered employers with the amount of benefits significantly increased in 2006, but was still lower than the actual levels of satisfaction as shown in the following table.

Satisfaction with amount of benefits (Those completely or mostly satisfied)	**2005**	**2006**
Injured workers	70%	66%
Registered employers	77%	73%
Stakeholders' perception of injured workers' satisfaction	33%	48%
Stakeholders' perception of registered employers' satisfaction	56%	70%

Types of Benefits

A - Wage Loss Benefits

During the 1970's and 1980's, the Canadian systems moved from awarding benefits according to loss of body part or function to a wage-loss system whereas the injured worker receives monetary compensation based on earnings. Section 38.1(3) of the New Brunswick *Workers' Compensation Act* provides the legal authority for maximum compensable earnings. They are set at one-and-a-half times the New Brunswick Industrial Aggregate Earnings (NBIAE). The NBIAE is set under section 38.1(1) at $27,323 for 1993 and increases annually by the percentage increase in the Consumer Price Index for Canada for all items for the twelve month period ending the 30th day of June in each year. The increase is set on January 1st of each year under Section 37.01.

In New Brunswick, the maximum compensable earnings for 2007 were $53,200. Across Canada this ranged from $44,700 in Prince Edward Island to $72,300 in Yukon. Manitoba has no limit on insurable earnings.

All jurisdictions calculate benefits as a percentage of lost earnings or loss of earnings capacity...

All jurisdictions calculate benefits as a percentage of lost earnings or loss of earnings capacity, i.e., the amount the worker was earning before the injury and the amount the worker is capable of earning after the injury (see following table). In New Brunswick, benefits for wage loss is 85 percent of net loss of earnings and range from 75 to 85 percent in Nova Scotia and Yukon to 90 percent in most other jurisdictions. Although Québec's percentage of earnings benefits is 90 percent, it should be noted that an adjustment under the *Income Tax Act* has the effect of a reduced benefit level for the majority of injured workers and they are effectively getting less than 90 percent of net.

2007 Key Benefits Information

	Max. Comp. Earnings	% of earnings benefits are based on	Waiting Period	Employer required to pay worker for Day of Injury	Employer required to pay worker for Period after Injury
AB	$64,600	90% net	No	Yes	No
BC	$64,400	90% net	No	No	No
MB	No Max	90% net	No	Yes	No
NB	$53,200	85% net	3 days	No	No
NL	$48,425	80% net	No	Yes	No
NT/NU	$69,200	90% net	No	No	No
NS	$46,700	75% net 1st 26 wks then 85% net	2 days	No	No
ON	$71,800	85% net	No	Yes	No
PE	$44,700	80% net 1st 38 wks then 85% net	60% weekly compensation	No	No
QC	$59,000	90% net	No	Yes	14 days
SK	$55,000 $55,000	90% net	No	No	No
YT	$72,300	75% gross	No	No	No

Source: http://www.awcbc.org/english/board_pdfs/Benefits_Key_Benefits_Information.pdf

For accidents in New Brunswick that occurred in calendar years 2002 through 2006 inclusive, 9.5 percent of claimants had earnings in excess of the maximum compensable earnings (see table below).

Lost-time Claims by Year of Accident
Under and Over Maximum Insurable Earnings

Year	Under	Over	Total	Percentage Over
2002	6,614	636	7,250	8.8%
2003	6,669	680	7,349	903%
2004	6,048	689	6,737	10.2%
2005	5,998	615	6,613	903%
2006	5,145	571	5,716	10.0%
Total	**30,474**	**3,191**	**33,665**	**9.5%**

Source: Information provided by WHSCC, October 2007

Currently, New Brunswick does not have a minimum compensation rate. Between 1982 and 1993 there was a minimum compensation earning if an injured worker was totally disabled for 24 months (50

percent of NBIAE). In 2006, six jurisdictions provided for minimum compensation rates between 33.82 percent of the average industrial aggregate weekly wages in Québec to 48.73 percent in Saskatchewan. (See the following table for details).

	2006 Average Industrial Aggregate Wkly Wage $	2006 Minimum Wkly Compensation Rate $	Minimum Wkly Compensation as % of Wage
AB	799.98	275.93	34.49%
BC	739.56	334.85	45.28%
MB	676.74	281.80	41.64%
NB	683.72	None	n/a
NL	690.99	None	n/a
NT/NU	970.30	None	n/a
NS	658.94	None	n/a
ON	781.93	299.52 (MF)	38.31% (MF)
PE	607.15	None	n/a
QC	703.18	237.84 241.19	33.82% 34.30%
SK	693.42	337.89	48.73%
YT	852.78	None	n/a

MF means based on "Modified Friedland" formula. See www.wsib.on.ca for more details
Source: AWCBC – Spring 2007

Top-up/Claw back

In New Brunswick, an injured worker is allowed to earn, through the combination of compensation benefits and financial remuneration, a maximum of 85 percent of his/her pre-accident net earnings. While this does not prevent the employer from paying remuneration to the injured worker who is receiving compensation benefits (top-up), the legislation requires a reduction or claw back of compensation benefits so that the combined total received by the injured worker does not exceed 85 percent of pre-accident net earnings. Seven jurisdictions do allow a top-up, at least in part, without claw back to their compensation as shown in the following table.

Can injured workers receive a top-up to their compensation benefits without claw back?

AB	Yes
BC	Yes
MB	Yes
NB	No
NL	No
NS	Yes
NT/NU	Yes
ON	Yes
PE	No

Can injured workers receive a top-up to their compensation benefits without claw back?

QC	Yes
SK	No
YT	No

Source: AWCBC Supplemental Benefits – Employment-Related Remuneration, Collateral (Top-Up) Benefits, Spring - 2007

Supplements to Compensation

The *Workers' Compensation Act* requires the Commission to reduce loss of earnings benefits when an injured worker receives supplements to compensation (in addition to their benefits). Legislation identifies supplements to compensation as:

- Remuneration from the accident employer (salary, wages, overtime);
- Any income replacement or supplement benefit from the accident employer (vacation pay, sick benefits, employer sponsored disability); and
- Any income replacement or supplement benefit from an employment-related source (employer or union retirement pension, RRSP, CPP retirement).

The Commission, through Policy No. 21-215: Supplements to Compensation, identifies sources of financial remuneration. Currently these include:

- Wage or salary;
- Vacation pay;
- Bonuses and tips;
- Overtime;
- Shift differentials or premiums;
- Retroactive pay increases;
- Sick leave benefits;
- Unemployment insurance benefits;
- Employer-sponsored disability coverage; and
- Any payment by the employer made to or on behalf of the injured worker.

Also included in estimating net capable earnings are: income tax, Employment Insurance (EI) premiums, Canada Pension Plan Disability (CPPD), and contributions under Canada Pension Plan (CPP).

Many jurisdictions have similar policies in place. However, Manitoba excludes retirement pension benefits, vacation pay cash-out, or any severance pay. Newfoundland and Labrador excludes among other income sources, severance pay and CPPD when determining wage loss benefits. Prince Edward Island injured workers are expected to apply for disability benefits under the Canada Pension Plan or the Québec Pension Plan.

Workers under 21 / Students

A worker under the age of 21 is defined as a young worker, whereas a student/learner is a person who is formally training for an occupation, trade, or vocation. In November 2006, the Board of Directors approved Policy No. 21-208: Workers under 21 to interpret the definition of average earnings under the *Workers' Compensation Act* which currently provides the Commission with the discretion to estimate the future earnings of workers under the age of 21 when calculating benefits. Evidence that indicates that the average earnings would probably have increased for a young worker includes: acceptance into an educational program at the time of accident; the approaching completion of an educational or apprenticeship program; and/or a job offer.[14]

However, for workers and students 21 years of age and over, their earnings are based on actual loss of earnings at the time of injury with no provisions for estimating future earnings. The determination of future earnings varies across jurisdictions:

- Future earnings of young workers are not estimated in Ontario, Saskatchewan, and Yukon;
- New Brunswick, Nova Scotia, Manitoba, and Alberta use age specific criteria to determine when young workers are eligible to have future earnings estimated; and
- Newfoundland and Labrador, British Columbia, and Northwest Territories use age criteria to estimate future earnings. The specific age used is based on the individual claim.

Waiting Period

An injured worker does not receive compensation until three days have passed without wages...

In New Brunswick, the *Workers' Compensation Act* provides the authority for a three-day waiting period for compensation benefits (wage-loss benefits). An injured worker does not receive compensation until three days have passed without wages or supplements to compensation, i.e., vacation pay, although all reasonable medical expenses are paid by WHSCC. This amendment was introduced as part of the 1993 legislative package to deal with the Commission's unfunded liability. Following the changes in 1998, any injured worker can be reimbursed for the three-day wait if: original injury results in hospitalization; compensation lasts for 20 days or more; a recurrence of original workplace injury happens within 20 days of original injury; or recurrence of injury results in hospitalization.

[14] WHSCC Discussion Paper – Workers' Compensation Coverage for Workers under 21

	Employer required to pay worker for:		Employer reimbursed for:		WCB pays comp. for day of injury	WCB pays comp. following day of injury	
	Day of injury	Period after injury	Day of injury	Period after injury			Waiting Period
AB	Yes	No	No	Yes	No	Yes	No
BC	No	No	No	Yes	No	Yes	No
MB	Yes	No	No	Yes	No	Yes	No
NB	No	No	No	No	No	After 3 days	3 working days
NL	Yes	No	No	Yes	No	Yes	No
NT/ NU	No	No	No	Yes	No	Yes	No
NS	No	No	No	Yes	No	After 2 days	2 days
ON	Yes	No	No	Yes	No	Yes	No
PE	No	No	No	No	No	Yes	60% wkly comp.
QC	Yes	14 days	No	Yes	No	Yes	No
SK	No	No	No	No	No	Yes	No
YT	No	No	No	Yes	No	Yes	No

Source: http://www.awcbc.org/english/board_pdfs/Benefits_Waiting_Periods.pdf

New Brunswick, Nova Scotia, and Prince Edward Island are the only provinces with a waiting period. In Alberta, Manitoba, Newfoundland and Labrador, Ontario, and Québec, the employer is required to pay the worker for the day of injury. Québec is the only jurisdiction that requires the employer to pay the worker for 14 days after the injury, after which time the Commission would then reimburse the employer. The table below details the wait periods for all jurisdictions.

The following is an example of waiting period benefit comparisons in Atlantic Canada.

Benefit Amounts Starting from the Date of the Accident (2006)

	NB	NS	NL	PE
Coverage	85% net 51,900	75% net 45,100	80% net 47,245	80% net 43,300
Waiting period	3 day wait	2 day wait	No wait	60% of benefits
1st week benefit amount, after waiting period is applied.	$255.13	$298.17 If employer pays employee his wages for the two days WCB will pay	$540.98	$194.90

	NB	NS	NL	PE
		employer $198.78.		
Subsequent weekly benefit amount	$637.83	$496.95	$540.98	$487.26
Cumulative benefit amount				
Week 3	$1,530.79	$1,292.07	$1,622.94	$1,169.42
Week 4	$2,551.32	$1,789.02	$2,163.92	$1,949.04
Week 52 (Total annual benefit)	$33,167.16	$28,130.96	$27,365.38	$25,763.82

Source: WHSCC Information Document May 2007, p. 18.

Discussion of Key Issues – Wage Loss Benefits

The level of benefits was the issue most often raised during the stakeholder consultations by both worker and employer stakeholders. While the stakeholders often had similar views and opinions on other areas of the Independent Review Panel's mandate, with respect to benefits the views were most often diametrically opposed. Most worker groups strongly advocated increasing benefit levels and removing various restrictions such as the three-day waiting period and the provisions dealing with benefit top-up. On the other hand, most employer groups maintained steadfast opposition to the elimination of the three-day waiting period and top-ups, as well as any increase in benefits at this time, until assessment rates have been reduced to more reasonable levels.

The Independent Review Panel was disappointed at this apparent lack of consensus among the principal stakeholder groups. However, upon reflection, it should not have been surprising given the nature of the Panel's mandate and the consultation process that was put in place. This process did not facilitate the development of consensus among the various stakeholders, but instead permitted parties to bring forward their own priorities and suggestions for how the system should function in the future.

It is difficult for the Independent Review Panel to make specific recommendations on changes to benefits (or with respect to the setting of assessment rates) in the absence of any consensus among the stakeholders. However, the Panel would be remiss if it did not identify areas where New Brunswick's benefits do not compare well with those in other jurisdictions and suggest that the Board of Directors give priority consideration to addressing these particular issues.

The Panel thoroughly researched the issues and requested cost estimates from Morneau Sobeco on the effects of certain changes if introduced to the coverage and benefit provisions of the *Act,* as well as certain operational aspects of the Commission. The Independent Review Panel was cautioned that comparisons between jurisdictions may be challenging because of significant differences in approach for certain benefits, as well as the many Commission policies interacting with the *Act(s),* and the many nuances that exist in practices.

The major issues the Panel identified under wage loss benefits and which will be reviewed in turn are: (a) maximum compensable earnings; (b) 85 percent to 90 percent of pre-accident net earnings; (c) top-ups; and (d) and the three-day waiting period.

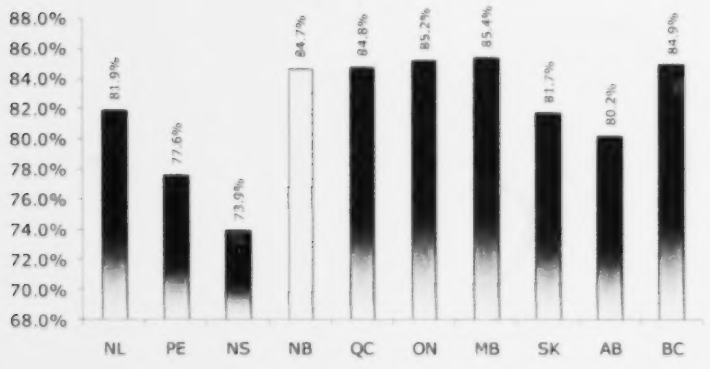
(a) Maximum Compensable Earnings

The Independent Review Panel heard various views about maximum compensable earnings. Some suggested maintaining the maximum compensable earnings, whereas other suggested its removal.

The Panel's research indicates every Canadian jurisdiction other than Manitoba has maximum compensable earnings (see chart on page 79) and ranged from $44,700 in Prince Edward Island to $72,300 in Yukon in 2007. Whether the level of maximum compensable earnings is adequate depends on a variety of factors. Direct comparisons may not be appropriate because of regional and economic differences.

The chart below shows the percentage of workers in all jurisdictions in Canada that are fully covered for their full earnings. The proportion of workers fully covered in New Brunswick is estimated at just under 85 percent in 2005 similar to the top four other provinces which also are close to 85 percent – Ontario, Québec, Manitoba, and British Columbia. Morneau Sobeco indicated that on this basis the maximum compensable earnings in New Brunswick in 2005 provided comparable coverage to that of the best in Canada (see following chart).

Percent of Workers Fully Covered
2005 Maximums



Source: Morneau Sobeco - January 2008

In 2007, from the key benefits information chart on page 79, New Brunswick still has the highest maximum compensable earnings level in Atlantic Canada.

In response to suggestions that the maximum compensable earnings be eliminated, relevant considerations brought forward to the Panel by Morneau Sobeco are: (1) the impact of potentially large claims, and (2) increased assessments for employers with workers above the current maximum. Some industries that have numbers of workers with earnings above the current maximum of $53,200 including for example, the forestry industry, would be singled out for increased assessment burden.

The Independent Review Panel observes most private insurers have a limit on maximum insurable benefits. The Panel is of the opinion that based on analysis, the current level of maximum compensable earnings fairly covers a percentage of New Brunswick's workforce comparable to the top four Canadian jurisdictions.

(b) 85 Percent to 90 Percent of Pre-Accident Net Earnings

The percentage of earnings benefits was an issue raised during the stakeholder consultations. Some stakeholders were satisfied with the percentage of earnings benefits at 85 percent of net loss earnings while others wanted to see it return to 90 percent.

From Ontario east, New Brunswick's percentage of earnings benefits is as high as any jurisdiction, whereas the western provinces are five percent higher. The Independent Review Panel recognizes the significance of wage loss percentage is heightened for those with long-term disability claims. However, this possible concern is tempered by the fact that long-term disability benefits in New Brunswick have full CPI inflation protection. Every other province with the exception of Newfoundland and Labrador has less favourable inflation protection (see following table).

	Wage Loss	Inflation Protection
NB	85%	Full CPI
NL	80%	Full CPI
NS	75%/85%	55% of CPI
PE	75%/85%	75% of CPI-1%
ON	85%	50% of CPI-1%
QC and Western Provinces	90%	Wage Index (Manitoba) to CPI-1%

Source: Morneau Sobeco, Current System Status, June 2007

Given that New Brunswick's percentage of earnings benefits is at least equivalent to any jurisdiction from Ontario east, and coupled with the fact that New Brunswick has full CPI inflation protection, the Panel views that the New Brunswick wage loss percentage compares

favourably with other jurisdictions, particularly for workers on long-term disability claims.

(c) Top-Ups

The Independent Review Panel heard differing views on top-ups to pre-accident earnings. From the research, the Panel found that seven other jurisdictions allow for top-ups. In New Brunswick, benefits payable are reduced so that the combined total received by the injured worker does not exceed 85 percent of pre-accident net earnings.

...seven other jurisdictions allow for top-ups.

As Nova Scotia amended its legislation to permit top-ups in 1999, the Panel asked Morneau Sobeco to provide background information on the changes introduced in Nova Scotia to remove the disincentive to an employer to consider offering top-up benefits to an injured worker. The information provided states:

> It should be noted that it is expected that the presence of top-up benefits will lead to an increase in claim frequency and duration. The exact impact cannot be measured as there is not sufficient historical data to carry out an assessment. However, an examination of lost time claims experience in Nova Scotia does show a modest increase in claims frequency in 1999 and 2000 after top-up benefits were made more accessible. It should also be noted that this only suggests a link as there is no proof that the increase was linked to the presence of top-up benefits during this period in Nova Scotia. [15]

The Independent Review Panel accepts the underlying principle that no person should be in a better economic situation when they are not working as when they are working. To the extent that New Brunswick's legislation effectively prohibits the worker from receiving a top-up, comparably, it is in the minority as seven other Canadian jurisdictions do allow for top-ups. Moreover, the Government of New Brunswick has also agreed for Parts I and II of the New Brunswick public sector, to top benefits to employee's regular, pre-accident income. Because the Government is self-insured, the full cost of wage loss benefits, including the topped up portion, is borne by the Province and does not financially impact other employers as there is no collective liability.

(d) Three-Day Waiting Period

The Independent Review Panel heard representation from stakeholders regarding the three-day waiting period more than any other single issue. The contrasting positions advanced were forcefully advocated on both sides: eliminate or maintain the three-day waiting period. Still others had differing viewpoints on whether or not to have a three-day waiting period specifically for police officers and firefighters.

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[15] Morneau Sobeco, Report on Certain Coverage, Benefit Provisions and Operational Aspects of Current System, January 2008, p. 17.

The Panel also heard many representations that employers should be required to compensate an injured worker for the day of injury provided the employee reports the injury that day.

The WHSCC Board of Directors reviewed this wait-period issue in 2002/2003 and decided then that the cost of eliminating the three-day waiting period would have significant impacts on other benefits, as well as the assessment rate.

This is addressed by Morneau Sobeco in a cost estimate specifically requested by the Panel as follows:

> The introduction of changes to the Act on January 1, 1993, along with changes in the administrative policies and practices regarding claims management, coincided with a significant reduction in new claims from 1992 to 1994. Removal of the three day waiting period which was part of the 1993 changes could well lead to a partial reversal of the reduction in new claims volume that was experienced in the two year period following the introduction of the 1993 changes. In fact, there was a small increase in new claims volume with the modest improvement in benefits in 1998 (i.e., most important change was a change to wage loss benefits for the first 39 weeks following injury from 80% to 85% of net wage loss).
>
> The claiming patterns under insurance programs of all types (other than life insurance) are affected by the benefit levels and ease of access. We believe the three day waiting period under a workers compensation program is no different. In fact, workers' compensation experience in New Brunswick, Nova Scotia and Newfoundland & Labrador show similar patterns in both directions following significant benefit changes. In most situations, one cannot easily predict or assess the impact of a change in claiming patterns. ***The best that can be achieved is an assessment of the potential risk under plausible scenarios***.[16]

Morneau Sobeco further indicated to the Panel that if the 1993 legislative amendments were to be changed back (removal of three-day wait), new accident costs would increase by $0.14 - $0.27 per $100 of payroll for assessed employers and annual costs for self-insured employers would increase by $1.6 to $3.2 million. Morneau Sobeco concludes that the results of their analysis show a significant financial risk associated with the removal of the three-day waiting period.

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[16] Morneau Sobeco, *Report on Certain Coverage, Benefit Provisions and Operational Aspects of Current System*, January 20[illegible], p. 10.

The Independent Review Panel also asked Morneau Sobeco to review the impact of a one or two-day waiting period. There was no data available to allow Morneau Sobeco to make such an estimate on the impact of a two-day and a one-day waiting period. It was expected that changing from a three to a two-day waiting period would have a modest impact on claims incidence and resulting costs, and a change from a three to a one-day waiting period would likely be close to the estimates above.

The Independent Review Panel was unable to develop a clear consensus on the top-ups and three-day waiting period issues.

The Chair and the workers' representative would recommend allowance for negotiated, voluntary top-ups without claw backs.

The Chair and workers' representative would also make the following recommendations:

- The immediate reduction of the waiting period to two days and a reimbursement of the two-day wait after 10 days on claim, as well as a directed process by the WHSCC to review timely alternatives for benefit changes.
- The establishment of rules for compensation of injured workers for the day of an injury provided the worker reports the injury that day.

The employers' representative does not support these positions or any eventual elimination of the waiting period.

The Chair and the employers' representative further do not support the creation of a special exemption for firefighters and police officers. The elimination of any waiting period for firefighters and police officers is supported by the workers' representative.

Short of full consensus on the above, the Panel believes these issues are best left to the WHSCC Board of Directors which the Panel envisages as (consistent with the general thrust of this Report) an independent and stakeholder driven body. In the Panel's view, the stakeholder Board will be best able to decide how resources are directed or expended and what the system's priorities and benchmarks should be over time. It is the members of the Board of Directors who have ongoing accountability to their respective stakeholder communities.

The Board of Directors has reached consensus on improvements to benefits over the last number of years which have been implemented. The Panel expects that when the Board of Directors does reach a consensus and makes recommendations for changes, those changes will go forward for implementation.

As indicated in this portion of the Panel's Report, New Brunswick's wage loss benefits compare favourably overall with those in other jurisdictions, particularly in Atlantic Canada. However, the

Independent Review Panel has identified a number of areas where New Brunswick's benefits do not compare so well with those in some other jurisdictions, including the fact that as a result of the three-day wait, a significant number of New Brunswick employees of assessed employers do not receive any wage-loss benefits following a workplace injury.

The Panel suggests the Board of Directors should give timely consideration to alternatives to benefit changes including:

- A reduction of the waiting period to two days and a reimbursement of the two-day wait after 10 days on claim; and
- The establishment of rules for compensation of injured workers for the day of an injury provided the worker reports the injury that day.

Recommendation #27

The Independent Review Panel recommends the WHSCC give timely consideration to alternatives to benefit changes including:

- ***A reduction of the waiting period to two days and a reimbursement of the two-day wait after 10 days on claim; and***
- ***The establishment of rules for compensation of injured workers for the day of an injury provided the worker reports the injury that day.***

Recommendation #28

The Independent Review Panel recommends all options for benefit change by the WHSCC be consistent with the goal of maintaining a stable assessment rate and fully funded liability.

B - Extended Disability Benefits

Long-Term Disability

Workers who suffer an extended or permanent loss of earnings resulting from a work-related injury, recurrence of injury or occupational disease may be entitled to long-term disability benefits that are designed to compensate the injured worker for any discrepancy between pre-accident earnings and his/her earnings capability post-accident.

Indexing of benefits is also an important benefit. Jurisdictions vary on how to index annuities from 50 percent of CPI in Ontario to full CPI in New Brunswick, Newfoundland and Labrador, Québec, and Saskatchewan. Manitoba uses a Wage Index.

Injured workers receiving long-term disability benefits are entitled to receive Canada Pension Plan Disability (CPPD) benefits, yet often do not apply for them. Since 1998, there has been a 13 percent increase in the number of injured workers on long-term disability benefits who do not have CPPD. As of July 31, 2007 there were 2,386 long-term disability recipients active with the Commission of which 729 or 29 percent were in receipt of CPPD with an average monthly receipt per claim of $780. When fewer long-term disability claims are offset by CPPD benefits, the Commission incurs higher benefit costs.

Change in CPPD Award Status

	1998		2006	
	Claims	%	Claims	%
With CPPD	643	42%	702	29%
Without CPPD	888	58%	1,690	71%
Total	**1,531**		**2,392**	

Source: Information document provided by WHSCC, p. 52.

Most jurisdictions deduct all or a portion CPPD from loss of earnings benefits including New Brunswick, Prince Edward Island, Nova Scotia, Québec, Ontario, Manitoba, Saskatchewan, and British Columbia.

Prince Edward Island workers are expected to apply for disability benefits under the Canada Pension Plan or the Québec Pension Plan. Workers who do not apply, and in the opinion of its Workers' Compensation Board are eligible for such disability benefits, will be determined to be in receipt of such benefits and will have their wage loss benefits adjusted accordingly.

Newfoundland and Labrador and Alberta exclude CPPD when determining wage loss benefits.

Permanent Partial Impairment Awards (PPI)

Most jurisdictions operate a dual award system consisting of loss of earnings benefits and PPI awards. PPI awards consist of a lump sum payment intended to compensate for a permanent loss of function caused by a work-related injury. Most jurisdictions including New Brunswick, base the impairment amount on the functional limitations caused by the injury although Saskatchewan offers specific awards related to disfigurement.[17]

In 2006, as noted in the table below, the minimum lump sum PPI awards ranged from $500 in New Brunswick, Prince Edward Island, and Saskatchewan to over $29,000 in Ontario. Nova Scotia does not set a minimum amount.

The maximum lump sum PPI awards ranged from $30,900+ in Manitoba to $75,713 in Ontario. In some jurisdictions such as Nova

[17] WHSCC Information Document May 2007

Scotia and Ontario, there is no set maximum. In New Brunswick, the maximum PPI award was set at $53,200 (2007) and is not linked to loss of earnings benefits.

Permanent Physical Impairment Awards (2006)

	Minimum	Maximum
AB	$1,480.94	$74,047.26
BC	N/A	N/A
MB	$1,030.00	Maximum – $30,900 plus $1,240 for each full percentage over 30%
NB	$500.00	$51,900.00
NL	$1,000.00	$47,245.00
NS	No set minimum	No set maximum
NT/NU	N/A	N/A
ON	$29,121.10	$75,713.20
PE	$500.00	Maximum earnings ceiling in effect on date of accident.
QC	$885.00	N/A
SK	$500	$45,200
YT	Varies depending on % impairment, age of worker and average wage in year of impairment	Varies depending on % impairment, age of worker and average wage in year of impairment

Source: AWCBC March 2007

As seen in the following table, awards for permanent physical impairment in New Brunswick have been increasing since 2002.

Permanent Physical Impairment Awards
Number of Awards

2002	547
2003	652
2004	686
2005	631
2006	899

Source: Information provided by WHSCC 2008

Estimated Capable Earnings (Deeming)

New Brunswick's legislation, as with all its provincial counterparts, provides a basis for loss of earnings benefits for an injured worker – the difference between what the injured worker was earning before the accident (average net earnings) and what the injured worker is capable of earning after the accident (net estimated capable earnings) or deemed to earn.

Section 38.1(1) of the *WC Act* defines "loss of earnings" as *(a)* average net earnings, and *(b)* the earnings the worker is estimated to be capable of earning at a suitable corporation after sustaining the injury, less any income tax and premiums under the *Employment Insurance Act* and contributions under the *Canada Pension Plan* that would be payable by the worker based on those earnings.

Commencing in 2003, the Board of Directors of the WHSCC began a comprehensive review of its policies and processes leading up to any determination of estimated capable earnings with a described intent to ensure alignment with the Return to Work Goals of the Commission.

This project took almost three years before all policies were reviewed and the current Calculation of Benefits Policy of the Commission, Policy No. 21-210 was approved (effective August 30, 2007).

A previous stand alone Estimated Earnings Policy (No. 21-205) was rescinded. The essential mechanical process for the calculation of benefits, based on Estimated Capable Earnings, is now formulated in the Calculation of Benefits Policy read with other policies, including those Identifying Suitable Employment and Vocational Rehabilitation, which provide the criteria and direction for rehabilitation and the determination of how and when to estimate capable earnings for suitable employment.

Vocational rehabilitation... principal course of action to assist injured workers who have a permanent work restriction...

Vocational rehabilitation is intended by the Commission as the principal course of action to assist injured workers who have a permanent work restriction to return to suitable employment or to become employable when return to work in the pre-accident job is impossible or improbable. To be eligible for vocational rehabilitations services, the current Vocational Rehabilitation Policy of the Commission prescribes:

- The injured worker must have a permanent work restriction resulting from the compensable injury; and
- The accident employer is unable or unwilling* to accommodate the injured worker in the pre-accident job. (*The Independent Review Panel expects any accommodation process is subject to the Human Rights test of undue hardship, confirmed by the Panel under recommendation number 42).

Once all vocational activities are complete or have been concluded, including job searches, the Commission then estimates an injured worker's capable earnings by:

- Determining if the injured worker is earning remuneration after the injury; and/or
- Examining if the injured worker is capable of earning remuneration at a suitable occupation when the Commission determines the injured worker is ready to return to work.

Discussion of Key Issues – Extended Disability Benefits

The Independent Review heard various representations during the consultation process about CPPD disability benefits: CPPD should be in addition to workers' compensation benefits; it should be deducted from workers' compensation benefits; it should be mandatory for claimants to apply for CPPD; as well as, it should not be mandatory for claimants to apply for CPPD.

Morneau Sobeco indicated that fewer workers are applying or are successful in applying for CPPD benefits than was the case prior to 1998. Two possible causes are: (1) the Canada Pension Plan Program has tightened their criteria for eligibility for CPPD and there is little advantage, financially, to the worker to apply for CPPD, as the Commission will deduct any CPPD benefits related to the workplace injury; and (2) acceptance of a CPPD application may take months and are payable from the date of the injury. Therefore, the first payment received by an injured worker may include a significant retroactive payment. The Commission must, by current legislation, deduct this payment from benefits resulting in a reduction of the monthly benefit stream for the CPPD being received and a further reduction in monthly benefits to recover the overpayment.

Morneau Sobeco, using data from the CPP Actuarial Study No.1 of November 2002 and the CPP actuarial valuation report:

> Attempted to estimate the number of new workers compensation LTD recipients in New Brunswick who would be expected to qualify for CPP benefits, then compared this expected number to actual results. The conclusion was that at most there could be 4 to 8 additional CPPD recipients per year. Such a result could lead to an impact of up to $0.01 per $100 of payroll on the average assessment rate charged by the Commission.
>
> This result is by no means guaranteed as we did not have any data on the number of LTD recipients who actually applied for CPPD. It could be that all applied already and in that scenario, there would be no impact on the Commissions financial results. In the end the decision on qualification for CPPD rests with the CPP, and making application does not mean that the claim will be accepted by the CPP.[18]

CPPD applications may be in the best interest of the injured worker...

CPPD applications may be in the best interest of the injured worker in terms of a better CPP retirement pension, as well as a potential impact on decreasing assessment rates. However, the Independent Review

[18] Morneau Sobeco, Report on Certain Coverage, Benefit Provisions and Operational Aspects of Current System, January 2008, p. 19.

Panel believes all options to increase the number of CPPD applications by workers receiving long-term disability benefits be considered including special incentives.

The Panel also heard that there should be minimum compensation benefits for those on long-term disability. There are six jurisdictions including New Brunswick that do not provide minimum compensation benefits including Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.

The Independent Review Panel therefore considers the New Brunswick situation to be consistent with other jurisdictions, particularly the other Atlantic Provinces.

Permanent Partial Impairment was not brought forward as an issue during the consultation process. The Independent Review Panel is satisfied that PPI offered by the Commission is comparable with the majority of Canadian jurisdictions.

The Panel heard numerous views on deeming, many of which opposed the deeming process. Others were concerned that injured workers were deemed for non-existent jobs and that the criteria for determining and awarding suitable employment opportunities must be realistic. New Brunswick has largely rural areas and the labour market provides for some particular challenges.

A review of Appeals Tribunals' decisions from August 2005 to July 2007 demonstrates to the Independent Review Panel that a large number of the so-called "deeming" decisions were reversed.

The Independent Review Panel notes that the intended three-year policy review, resulting in the rescinding of a single Determination of Estimated Earnings Policy in 2007, was intended to ensure any deeming was aligned more clearly with the Commission's "Return to Work Goals" and processes. As discussed elsewhere in the Report, it is the recommendation of the Panel that the following principle be added to the Commission's goals when developing any re-employment plan: "Retraining for jobs that are suitable and reasonably available."

The Panel is of the view that for there to be confidence in maintaining the principle of estimated capable earnings, suitable employment must reasonably exist in the current labour market.

Recommendation #29

The Independent Review Panel recommends the Commission adopt policies or procedures including periodic follow-up reviews, to confirm any estimated earning capacities for individual injured workers are realistic, reasonable, achievable, and supported by information that justifies the estimation.

C - Health Care and Rehabilitation

In most jurisdictions the Board is the authority that determines the necessity, character, and sufficiency of the medical aid provided or to be provided. In New Brunswick it is the *Worker's Compensation Act* that provides that authority. All reasonable costs associated with the workplace injury, including cost of initial medical reports, are born by the Commission.

All reasonable costs associated with the workplace injury, including cost of initial medical reports, are born by the Commission.

All jurisdictions provide comprehensive medical aid coverage, rehabilitation and return to work assistance for injured workers. Further information is provided in the section on Claims Process and Health Care Delivery.

D - Personal Care and Independent Living

All jurisdictions pay for personal care when needed. It is provided to seriously injured workers who require assistance with their daily living activities in their home or with other activities such as banking and shopping. Personal care in New Brunswick includes nursing, physical care assistance, home support, and home maintenance and can include respite care (period of rest for caregiver).

Personal care benefits in New Brunswick range from $67.27 to $1,531.20 per month or actual costs if professional services are used. The Quality of Life grant in New Brunswick for independent living helps seriously injured workers participate in recreational and social activities. The initial grant can be up to $2,000 and up to $1,000 every five years following the initial grant.

Personal care benefits in the other Atlantic Provinces:

- Newfoundland and Labrador: provincial rates for professional and personal care fees.
- Nova Scotia: maximum of $2,000 per month.
- Prince Edward Island: no fixed amount.

E - Claim Related Travel

Travel expenses in relation to a claim are covered in all jurisdictions.

Allowance for transportation in New Brunswick is $0.35/km and ranges from $0.145/km in Québec (public transportation permitting) to $0.52/km in Yukon.

Allowance for accommodations in New Brunswick is $65/night and ranges from $59/night in Saskatchewan to a maximum of $105/night in Québec. British Columbia, Northwest Territories and Nunavut, Nova Scotia, Ontario, and Yukon have no set rates.

Allowance for meals (per diem) ranges from $25.00 in Newfoundland and Labrador to $80.35 in Yukon. In New Brunswick it is $33.25.

F – Dependency Benefits

Each jurisdiction provides benefits to surviving spouses and dependents based on a legislated percentage of the deceased worker's earnings. In New Brunswick, benefits for the first year following the death are 80 percent of the deceased's average net earnings. After one year, the spouse elects one of two options:

1. 85 percent of the deceased worker's average net earnings to age 65 and an additional amount equal to five percent set aside for annuity at age 65.
    a. When the spouse remarries, the benefits are subject to a family means test.
    b. When benefits combined with net earnings of the new spouse exceed 85 percent of the deceased worker's average net earnings plus the net earnings of the new spouse, benefits are reduced.

2. Lump sum payment of 60 percent net annual income of the deceased worker, benefits of 60 percent of the deceased worker's average net earnings to age 65, with an amount equal to eight percent set aside for annuity at age 65.
    a. Monthly payments also paid for dependent children
    b. Children from previous relationship are eligible.
    c. No income test
        i. Survivor benefits are not terminated upon remarriage.
        ii. Either option cannot be more than 85 percent of earnings.[19]

All jurisdictions provide burial expenses ranging from $2,500 in Ontario to $10,600 in Saskatchewan. New Brunswick provides up to $7,000 for burial expenses based on an amount equal to 20 percent of NBIAE.

Annuities (Pension Benefits)

The Workers' Compensation Act sets out the conditions of the annuity.

The *Workers' Compensation Act* sets out the conditions of the pension benefits. WHSCC defines an annuity in Policy No. 21-206: Funding Annuity Benefits, as a sum of money administered under a contractual agreement with an external carrier to provide a pension for an injured worker or surviving spouse at age 65 in the form of equal monthly payments for a specified period of time. It applies to injured workers and surviving spouses who are entitled to receive benefits after January 1, 1982.

From 1982-1993 the amount set aside for an annuity was eight percent. The policy further states "Injured workers who previously qualified to have eight percent set aside under section 38.3(1) (a) of the *Workers' Compensation Act* (repealed); and who received, or were

[19] Information Document (AWCBC - March 2006) ; WHSCC - Workers' Compensation: A guide for New Brunswick Workers, Revised June 2006

entitled to receive this amount in a lump sum payment, also qualify to have five percent set aside for all benefits they were entitled to be paid after January 1, 1993."

Some jurisdictions such as Saskatchewan and Yukon set aside 10 percent (see following table). Alberta does not pay an annuity. Instead, the Economic Loss Payment is adjusted upon reaching retirement age (usually age 65 but may be later) to reflect the loss of retirement income, rather than employment income, and continues for the life of the worker.

In Ontario, there is on average about 50 new cases per month that qualify for a voluntary five percent contributions. Of these 50 new cases, approximately 15 percent elect to make the five percent voluntary contribution.

In Manitoba, the worker has the option of contributing up to the same percentage of future wage loss the WCB is contributing towards the annuity. This percentage the WCB sets aside depends on the amount contributed by the employer to the worker's company pension plan before and after the accident. As of December 31, 2007, there were 627 workers contributing to their own retirement annuity in Manitoba. This is about 22 percent of the total claims with retirement annuities.[20]

Annuity Jurisdictional Comparisons

NB	5% Annuity provision
NL	Replace lost employer and CPP pension
PE	Replace lost employer and CPP pension
NS	5% Annuity provision
QC	None but reduced wage loss benefits at ages 66, 67 and 68
ON	5% Annuity provision plus worker can put 5% from own wage loss benefits
MB	Complex provision 5% to 7% annuity provision less amount paid by employer after injury plus worker can match amount paid by Board
SK	10% Annuity provision
AB	Defined benefit pension of 2% per year of disability except for 100% Permanent Clinical Impairment (regular wage loss benefit for life)
BC	5% Annuity provision plus worker can put up to 5% from own wage loss benefits

Source: Morneau Sobeco, December 2007

Discussion of Key Issues

The Independent Review Panel heard suggestions that annuity benefits should be based on eight percent of compensation paid. The Panel asked Morneau Sobeco to evaluate if the current five percent annuity is sufficient for the stated objectives it is intended: to offset potential

[20] Information provided by Manitoba WCB.

deficits in the Canada Pension Plan and/or employer sponsored contributions at age 65 when wage loss benefits cease.

> The costing was carried out only for disability benefits since most of the survivor benefits paid for fatalities since 1982 already have an 8% annuity contribution rate. The costing is very straightforward as it simply involves grossing up current costs by 60% (i.e., effect of increasing from 5% to 8%).
>
> In considering such a change, it is important to clarify whether the change will only be for future contributions or whether current accumulated unpaid balances from prior years will also be adjusted to an 8% level.[21]

Morneau Sobeco indicated that for assessed employers, there would be an increase in average assessment rate of $0.01 per $100 of payroll for future costs and $0.01 for claims as of December 31, 2006 ($5.5 million increase in liabilities paid over 8 years) for a total of $0.02 per 100 of payroll. For self-insured employers, the expected increase in annual costs would be about $110,000 plus an impact on liabilities of $3.1 million. This does not include impact on survivor benefits.

The Independent Review Panel had representation on annuities regarding the payment of a lump sum in lieu of the annuity being paid over a period of time. It was recommended that an amount of less than $20,000 should be in the form of a lump sum payment to the claimant rather than annuitized. It is the Commission's policy that if the amount set aside plus accrued interest provides an annuity of less than $500 per year, the Commission pays the injured worker or surviving spouse the total amount in a lump sum.

It was also suggested that an injured worker who dies without any dependents, should have the annuity, at least for some period, paid to the estate of the deceased injured worker. The Panel views that monies remaining available are better left in the Accident Fund so as to be available for other injured workers as opposed to creditors of the estate of an injured worker who dies without dependents.

Recommendation #30

The Independent Review Panel recommends the WHSCC evaluate whether the current five percent annuity level is adequate to achieve the original general purpose identified as an offset for potential deficits in the Canada Pension Plan and/or employer sponsored contributions at age 65 when wage loss benefits cease.

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[21] Morneau Sobeco, Report on Certain Coverage, Benefit Provisions and Operational Aspects of Current System, January 2008, p. 14.

Recommendation #31

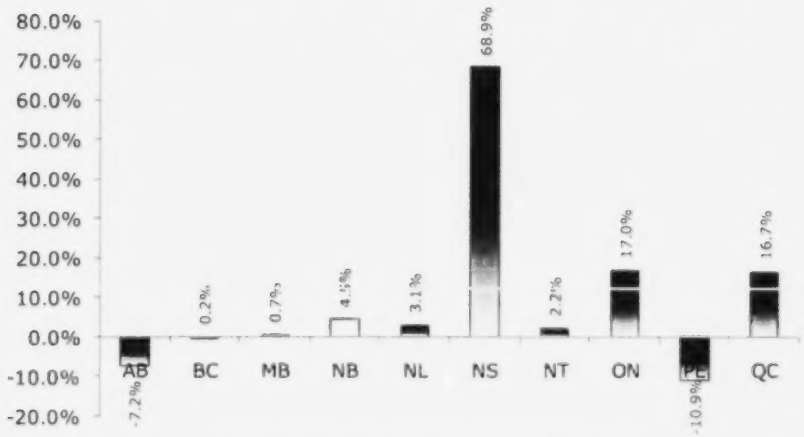
The Independent Review Panel recommends the WHSCC review its policy on the level of annuity payments that may be paid as a lump sum.

Cost of Benefits

With the exception of two jurisdictions, Alberta and Prince Edward Island, benefit payments for assessable employers have increased. These are the total benefit payments made for current and prior accident years for all benefits types, i.e., short-term disability, long-term disability, survivors' benefits, health care, and rehabilitation services. The increase in costs ranges from 0.2 percent in British Columbia to 68.9 percent in Nova Scotia. New Brunswick's benefit costs for assessable employers have increased by 4.5 percent over the five-year period 2001 to 2005, whereas the average for Canada is 11.7 percent (see following chart).

Percentage Change in Benefit Payments for All Years Paid During the Year for Assessable employers.

Excludes Administration Costs

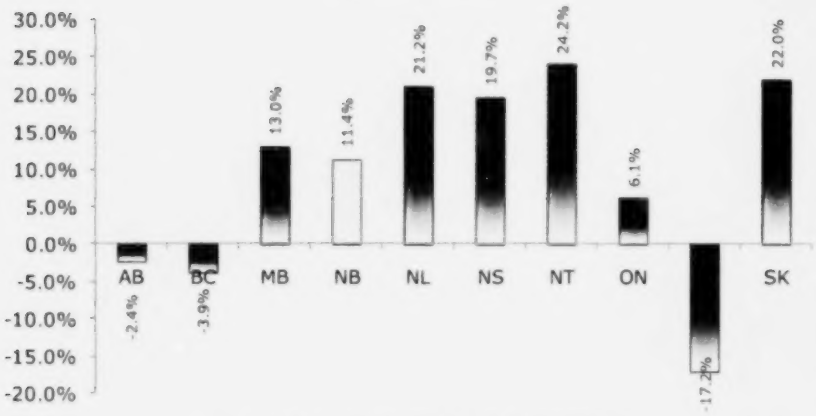


Canada 11.7 %

Source: AWCBC Key Statistical Measures 2001-2005

The trend for increasing benefits costs can also be seen by self-insured employers as shown in the following chart. Again, Alberta and Prince Edward Island have shown a decrease in costs, as well as British Columbia. In many cases, the increase in benefit costs is greater for self-insured employers than for the assessed employers.

Percentage Change in Benefit Payments for All Years Paid During the Year for Self-Insured employers.
Excludes Administration Costs



**Data for Quebec and Yukon is unavailable
Source: AWCBC Key Statistical Measures 2001-2005

MANDATE QUESTION OVERVIEW

The Independent Review Panel was asked to assess how well does the Workplace Health, Safety and Compensation Commission's legislated scope of coverage compare to other Canadian jurisdictions, including: number of workers covered; benefits offered to injured workers; treatment of workers while on benefits; and back-to-work activity reports.

In New Brunswick in 2006, 81 percent of injured workers surveyed indicated that they were satisfied with the Commission's delivery of service as were 84 percent of registered employers.

New Brunswick's workplace health, safety and compensation system provides coverage to a high percentage of the workforce (93.9 percent in 2006) and remains one of the jurisdictions with very high percentage coverage. The percentage of the workforce covered in other jurisdictions in 2005 ranged from 67.19 percent in Manitoba to 100 percent in Northwest Territories and Nunavut.

The proportion of workers covered for full wage loss benefits in New Brunswick is estimated at just under 85 percent in 2005 and was similar to the top four other provinces which also are close to 85 percent – Ontario, Québec, Manitoba, and British Columbia. Furthermore, 84.7 percent of workers were covered for their full earnings with the current maximum compensable earning level of $53,200 in 2007 and is among the best in Canada.

Although there are variations in benefit levels across Canada, New Brunswick offers the range of benefits found in other jurisdictions.

New Brunswick's percentage of earnings benefits (85 percent) is comparable to any jurisdiction from Ontario east. An important consideration is that New Brunswick's benefits are indexed at the full Consumer Price Index for inflation protection. Morneau Sobeco indicated that although Québec's percentage of earnings benefits is 90 percent, an adjustment under the *Income Tax Act* has the effect of a reduced benefit level for the majority of injured workers who are effectively getting less than 90 percent of net.

New Brunswick does not allow for injured workers to receive a top-up to their compensation benefits, although seven jurisdictions do permit tops-ups without claw back including Nova Scotia.

Currently, New Brunswick does not have a minimum compensable benefit. In order to receive minimum compensable benefits (50 percent of NBIAE), an injured worker would have had to be totally disabled for 24 months and have been injured between 1982 and 1993. Five other jurisdictions do not provide minimum compensable earnings including Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.

The current five percent annuity is comparable to what is offered in other jurisdictions. Saskatchewan and Yukon set aside 10 percent annuity, but neither jurisdiction allows for top-ups as it is considered remuneration.

It was the view of the Independent Review Panel that injured workers were not fully aware of all benefits available to them including personal care and independent living allowances and permanent partial disability awards. The Panel suggests a more concerted effort be put forth to educate workers on benefits offered by the Commission.

The Independent Review Panel was unable to develop a clear consensus on the top-ups and three-day waiting period issues.

The Chair and the workers' representative would recommend allowance for negotiated, voluntary top-ups, without claw backs.

The Chair and workers' representative would also make the following recommendations:

- **The immediate reduction of the waiting period to two days and a reimbursement of the two-day wait after 10 days on claim, as well as a directed process by the WHSCC to review timely alternatives for benefit changes.**

- **The establishment of rules for compensation of injured workers for the day of an injury provided the worker reports the injury that day.**

The employers' representative does not support these positions or any eventual elimination of the waiting period.

The Chair and the employers' representative further do not support the creation of a special exemption for firefighters and police officers. The elimination of any waiting period for firefighters and police officers is supported by the workers' representative.

Short of full consensus on the above, the Panel believes these issues are best left to the WHSCC Board of Directors, which the Panel envisages as (consistent with the general thrust of this Report) an independent and stakeholder driven body. In the Panel's view, the stakeholder Board will be best able to decide how resources are directed or expended and what the system's priorities and benchmarks should be over time. It is the members of the Board of Directors who have ongoing accountability to their respective stakeholder communities.

The back-to-work activity comparison is discussed in the Claims Process/Health Care Delivery section of the Report.

Claims Process / Health Care Delivery

How well does the New Brunswick Workplace Health, Safety and Compensation Commission's relationship with health care and income support providers compare to the relationships held by other Canadian workplace health, safety and compensation groups and their providers?

Claims Process / Health Care Delivery

This section discusses the claims process and health care delivery of New Brunswick's Workplace Health, Safety and Compensation Commission, the mandate question of the Independent Review Panel's Terms of Reference - How well does the New Brunswick Workplace Health, Safety and Compensation Commission's relationship with health care and income support providers compare to the relationships held by other Canadian workplace health, safety and compensation groups and their providers?

Background

In Canada, all jurisdictions provide comprehensive medical aid coverage, rehabilitation support, and return to work assistance for injured workers. The approach to providing medical aid and rehabilitation varies across jurisdictions. However, in most jurisdictions it is the authority of the Board to determine the necessity, character, and sufficiency of medical aid to be provided.

The 1980 Boudreau Report noted that:

> The percentage of injured workers suffering wage losses and the average amount of these wage losses is contingent on the degree to which the safety program and the vocational rehabilitation and retraining programs are successful.[1]

The Woods Gordon Report of 1988 also made a number of recommendations related to health care delivery by the Workers' Compensation Board (WCB) including:

> All hospital, medical, drug and related expenses incurred for, by, or on behalf of injured workers receiving compensation which are now presently paid for by Workers' Compensation Board be transferred to the Provincial Health Care system.[2]

What We Heard...

The Independent Review Panel heard many and often differing comments during our consultations about the claims process and health care delivery. Issues raised were in the areas of claims management, rehabilitation/return to work, and the Workers' Rehabilitation Centre.

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[1] Boudreau Report "Report of the Workers' Compensation Study Committee", February 1980, pp. 133-134.
[2] Woods Gordon Report "A Review of the New Brunswick Workers' Compensation Board", Phase II, Vol. I, February 1988, pp. 25-26.

...What We Heard...

The Panel heard differing viewpoints on the return to the pre-1993 definition of an accident and standard of proof whereby it will be presumed that an accident or illness arose out of and in the course of employment unless the opposite is shown. As well, there were views on whether or not entitlement should be contingent on the establishment of a work activity as the predominant cause of injury or disease.

Views on claims management included: decrease the time to process claims; investigate use of electronic claims submission and electronic funds transfers to improve payment times and record keeping; examine the case management system to ensure reasonable caseloads and support services; a more cooperative approach with injured workers by case managers; assign new case managers in the event of a continuing personality conflict; reallocate current resources from other areas of the WorkSafe Services Division to case management; establish standards for case managers to report to employers on a regular basis; give more consideration to medical reports from claimants' specialists concerning their medical condition and their work capacities; WHSCC doctors should respond personally to other doctor's letters rather than having support staff respond; and make funding available for a claims management unit within the nursing home industry where accidents and rates are among the highest in Canada.

Areas for consideration during the consultations relating to rehabilitation and return to work included the following suggestions: offer health care delivery in injured worker's hometown if possible; pursue contracts with medical professionals to give priority to WHSCC clients; the Commission should more actively engage the medical community to make it more rewarding to "fast track" workers to early and safe return to work; ensure safe return to work rather than cost benefit analysis (safe rather than quick and early); develop timely return to work incentives; and have employees attend the workplace during non-treatment periods. The Independent Review Panel also heard that the return to work legislation should be strengthened, specifically Section 43 to require that WHSCC "shall" undertake all necessary measures,

...What We Heard

including vocational rehabilitation services, to aid in getting injured workers back to work. It was mentioned that joint return to work committees be established in the workplace and that WHSCC should insist that all pre-accident employers fulfill their duty to accommodate.

A number of injured workers expressed the need for increased support by employers and the WHSCC to the injured worker; difficulty accessing medical services; being made to feel dishonest when questioned about their symptoms; being cut off benefits as a result of inappropriate medical diagnostics and care; and being pushed too hard and too fast at the Workers' Rehabilitation Centre to make progress, sometimes resulting in further injury.

A recurring message the Independent Review Panel heard regarding the Workers' Rehabilitation Centre was the need to establish a rehabilitation centre or equivalent services in the northern part of the Province. The Panel heard the Workers' Rehabilitation Centre was beneficial for minor injuries, but not for long-term injuries; that injured workers should not have to leave the centre for meals; and that the WHSCC should encourage car pooling to the rehabilitation centre. It was also suggested that a "value for money" audit should be undertaken at the Workers' Rehabilitation Centre to determine if the services could be provided more cost effectively by other parties.

Views brought forward about the claims management process and health care delivery were: overall pleased with the service; need for more accountability; complicated to fill out Form 67; difficulty accessing and obtaining funding for training; injured workers should not be charged to obtain copies of reports; increased emphasis on maintaining confidentiality; and increased capacity/resources to investigate cases of abuse.

The Panel also heard that claims costs should not be expensed to employers during wait times for medical/therapeutic treatment and that doctors should have a clear understanding about both sides of the situation when endorsing time off, i.e., perceived patient/doctor bond.

The New Brunswick Claims Process

The WHSCC's WorkSafe Services Division provides injured workers with services related to claim adjudication, case management, benefits payments, and return to work assistance. With 223 staff, the Division is accessible to employers and workers in four service locations: Bathurst, Grand Falls, Dieppe, and Saint John.

The claims process begins with an accident notification. The *Workers' Compensation Act* and the *Occupational Health and Safety Act* both require that accidents or incidents occurring in the workplace be reported to the Commission. Policy No. 21-106: Accident Reporting and Application for Benefits, indicates that employers have three different timeframes depending on the nature of the accident or incident in which they are required to report accidents:

- Immediately under the *Occupational Health and Safety Act*;
- Within 24 hours under the *Occupational Health and Safety Act*; and
- Within three working days of receiving notification of the accident by the worker under the *Workers' Compensation Act*.

Workers are required, under the *Workers' Compensation Act*, to provide notification of an accident to:

- Their employer as soon as practicable following a workplace injury; and
- The Commission by completing the Commission's accident report form (Form 67).

The WHSCC can be made aware of a workplace accident upon receipt of a number of documents, such as: Form 67, a medical report, or a hospital account.

In New Brunswick, as in other provinces, workers covered under the workers' compensation legislation are entitled to a variety of benefits if the injury or accident arises out of and in the course of employment. However, changes to the *Act* in 1993 resulted in changes to the standard of proof material to the definition of accident.

The decision-making principles for determining entitlement to compensation and the interpretation of the definition of "accident" are found in WHSCC Policy No. 21-100: Conditions for Entitlement - General Principles.

A claim file undergoes three phases before reaching case management:

1. The pre-adjudication phase – the status assigned to all new incoming claims and it is during this phase that the information gathering occurs.

2. The adjudication phase – the status assigned to the claim once the file is complete and ready to be adjudicated. The initial adjudication of claims is done centrally. "An adjudicator within the WHSCC's Adjudication and Benefit Services (ABS) unit will make the determination to accept or reject a claim. This is a legal determination as set out in the *Act*. An adjudicator may consult a WHSCC physician for an opinion on medical compatibility."[3]
3. The claim decision phase - the adjudicator determines if the claim meets the conditions for entitlement. If the claim is accepted, the adjudicator then determines if case management services are required – that is some injured workers may require comprehensive support from the Commission to help them recover from their injuries and return to employment. This assistance is provided through case management teams located in the regional offices, and may last for several months, or, in the most severe cases, several years. There are 32 case managers. Their caseloads can vary from 50 to 75 claims, as well as 40 to 45 long-term disability claims. For each client, the case manager has to communicate with an employer, two to three health care providers, and the client's spouse and/or representative. In 2006, case management services were received by 4,620 claimants.

In 2006...6,026 claim files involved lost-time of at least one day...

In 2006, the Commission created 25,203 claim files. Approximately one-half of these files did not have an application for benefits nor involved any claim costs, i.e., notification of "event" only. The Commission adjudicated 13,042 applications for claims, a slight reduction (0.1 percent) from 2005; 1,117 were rejected as being non work-related or from an uninsured employer. Of those accepted, 6,026 involved lost-time of at least one day (a 4.2 percent reduction from 2005), and 5,892 were no lost-time claims (medical costs only, and representing a 5.1 percent increase from 2005). There were eight work-related fatalities in 2006, representing a 33 percent decrease from the 12 work-related fatalities the previous year.

In 2005, the average calendar days from injury to first payment issued for all new lost-time claims in New Brunswick was 37 days. The satisfaction survey indicated that in general, injured workers were satisfied with the amount of time it took to receive their first benefits.

From information available across Canada in 2006, the time from injury to first payment ranged from 18.71 days in Saskatchewan to 44.84 days in Ontario. The percentage change in the average calendar days from injury to first payment issued for all new lost-time claims ranged from a decrease of 35.01 percent in Saskatchewan to an increase of 7.44 percent in Ontario as noted in the following table. The average calendar days from injury to first payment issued in New Brunswick has fluctuated over the five year period 2001-2006 between 37 and 41 days.

[3] http://www.whscc.nb.ca/hea4_e.asp

Average calendar days from injury to first payment issued for all new lost-time claims

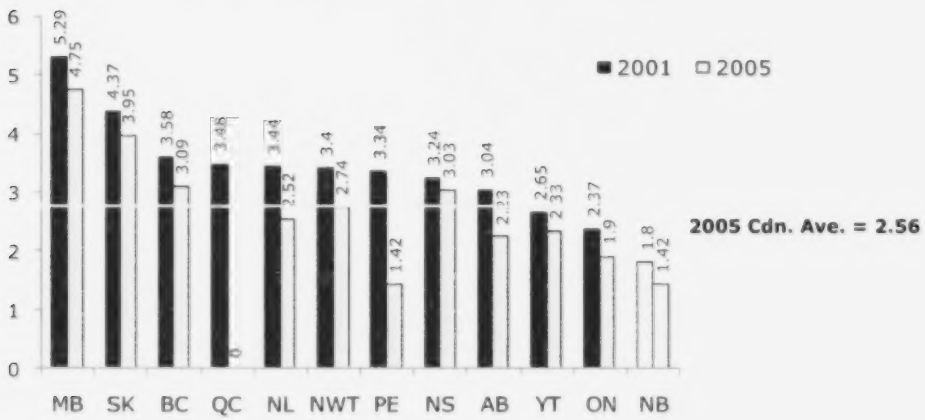
	2001	2002	2003	2004	2005	2006	% change
AB	24.74	21.61	19.00	18.30	19.00	20.00	-19.15%
BC	21.50	22.20	24.99	23.02	22.27	23.10	7.44%
MB	37.20	38.10	31.50	33.60	30.50	27.80	-25.27%
NB	41.00	40.00	39.00	40.00	37.00	39.00	-4.88%
NL	30.13	31.94	29.48	26.47	27.70	U/A	U/A
NS	28.80	22.00	25.90	34.19	26.00	26.00	-9.72%
NT/NU	33.56	42.90	46.74	38.80	37.60	34.20	1.91%
ON	43.61	44.82	42.99	42.63	43.89	44.84	2.82%
PE	47.53	50.08	45.60	42.89	46.92	41.66	-12.35%
QC	U/A	U/A	U/A	U/A	U/A	U/A	U/A
SK	28.79	27.97	25.12	21.38	18.69	18.71	-35.01%
YT	40.37	35.10	39.11	47.86	48.55	U/A	U/A

Source: AWCBC Key Statistical Measures 2001-2006

Work-Related Injuries and Fatalities

Lost-time accident frequency rates for all jurisdictions across Canada declined during the five-year period 2001 to 2005 as depicted in the following graph. In New Brunswick, the accident frequency rate declined 21 percent during the same period and remains the second lowest in Canada.

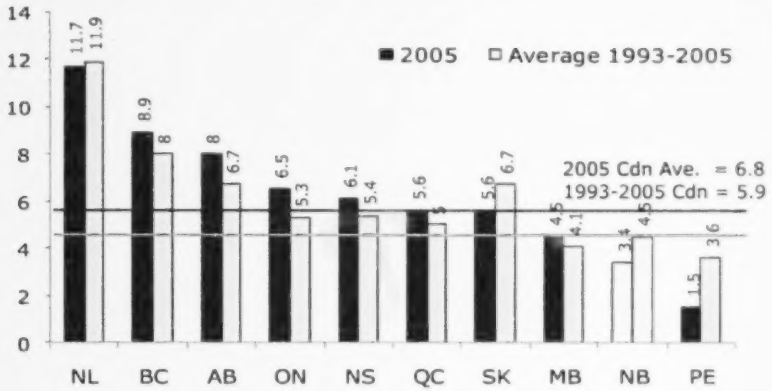
Lost Time Accident Frequency Rate (%)



Source: AWCBC Comparison 2001 & 2005

Work-related death incidence rates differ significantly across Canada as noted in the graph below. Over a 13 year period (1993 to 2005), Newfoundland and Labrador, British Columbia, Alberta, and Saskatchewan had among the highest incidence of workplace fatalities. New Brunswick's workplace fatality rate during this period was among the lowest at 4.5 work-related deaths per 100,000 workers.

Incidence of Workplace Fatalities per 100,000 workers (%)

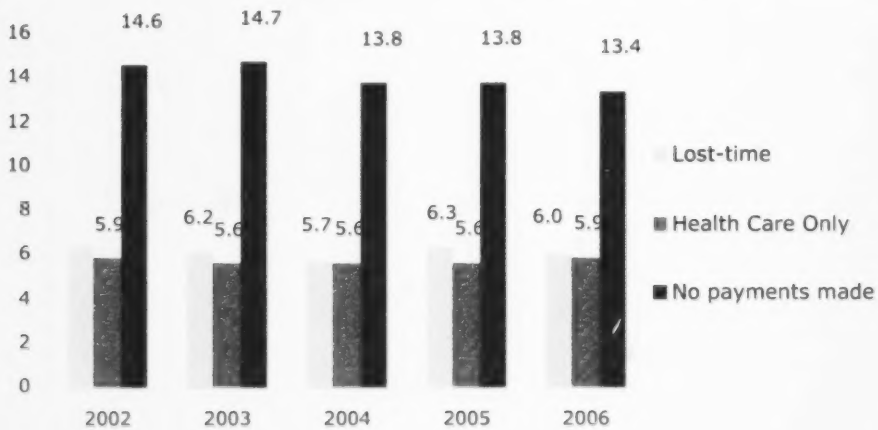


Source: AWCBC Key Statistical Measures

Types of Claims

In New Brunswick, there are three types of claims: lost-time claims, health care only, or no claim costs, of which the latter accounts for the greatest number of claims (see following graph).

Number of Claims Created by Type (in thousands)



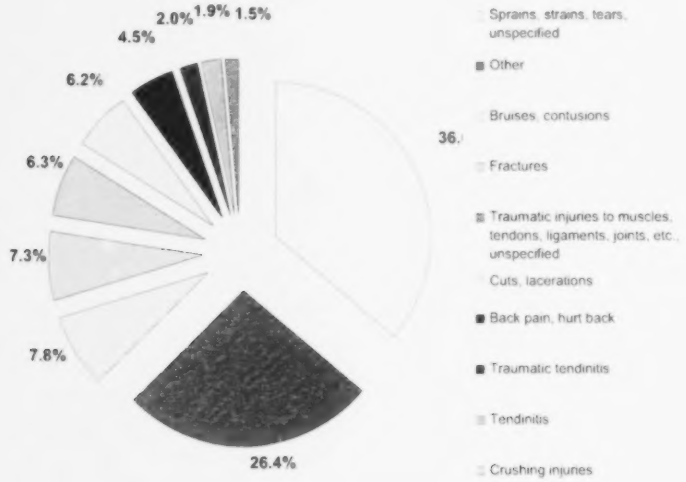
Source: 2006 WHSCC Stakeholder Report

A claim may be assigned the long-term claim status once the injured worker has completed their rehabilitation, but remains in a loss of earnings position because a permanent work restriction was identified as a result of their compensable injury. As can be seen in the graph below, most lost-time claims in 2006 were less than one year in duration.

Source: information provided by WHSCC

From 2001 to 2005 musculoskeletal injury (MSI) claims represented 36 percent of all lost-time claims. Data also indicated that 70 percent of these lost-time claims related to back and shoulder injuries.

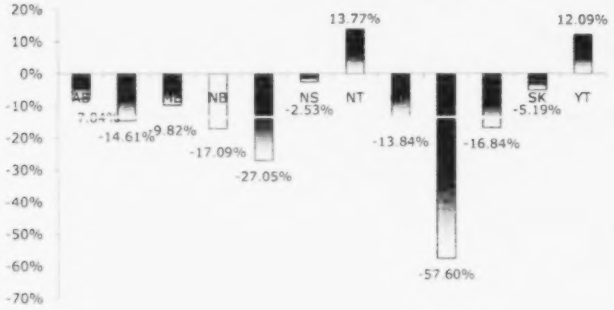
The following chart depicts the major categories of injuries that occur in the workplace in New Brunswick.



Source: 2006 WHSCC Stakeholder Report

Lost-time claims have also shown a decrease from 2000 to 2005 across Canada (see following graph). New Brunswick's reported lost-time claims decreased by 17.09 percent, better than the national average of -13.9 percent. Reported lost-time claims for the six year period ranged from a decrease of 57.6 percent in Prince Edward Island to an increase of 13.77 percent in the Northwest Territories.

Percentage change for Total number of Lost-Time Claims from 2000 to 2005

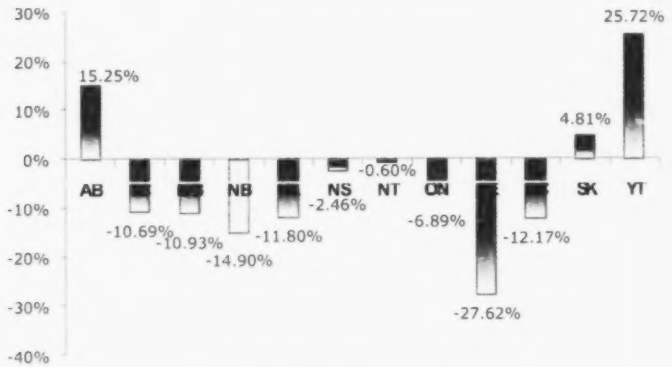


Cdn Ave. = -13.90%

Source: AWCBC Key Statistical Measures

The volume of all claim types reported (lost-time, no lost-time, health care only, occupational disease, and fatal claims) has been declining in most jurisdictions over the past six years other than in Saskatchewan, Alberta, and Yukon (see graph below). New Brunswick and Prince Edward Island have shown the largest decrease in claims reported. New Brunswick's reported claims have decreased by 14.9 percent over the period, a greater than nine percent decrease compared to the Canadian average.

Percentage change for All Claims Reported from 2000 to 2005



Cdn Ave. = -5.27%

Source: AWCBC Key Statistical Measures

As seen in the two following tables, lost-time claims for both assessed employers and self-insured employers have been decreasing in most jurisdictions, although generally there has been a far greater decrease reported by assessed employers than self-insured employers. In New-Brunswick, while the lost-time claims for assessed employers decreased 20 percentage points over a five-year period, the lost-time claims for self-insured employers decreased less than one percentage point during the same period.

Lost-Time Claims - Assessed Employers

	2000	2001	2002	2003	2004	2005	% change
AB	39,159	38,549	37,573	36,567	35,113	35,460	-9.45%
BC	67,271	62,128	56,938	54,834	56,213	58,355	-13.25%
MB	17,852	16,723	16,200	15,776	15,362	15,787	-11.57%
NB	4,498	4,198	3,851	3,727	3,335	3,589	-20.21%
NL	6,211	5,796	5,172	4,829	4,492	4,432	-28.64%
NS	8,547	8,301	8,133	8,182	8,528	8,359	-2.20%
NT/NU	824	860	932	918	791	935	13.47%
ON	88,949	83,250	80,989	77,952	75,532	73,884	-16.94%
PE	1,884	1,610	1,341	1,126	956	804	-57.32%
QC	116,592	110,124	107,713	104,384	101,550	96,566	-17.18%
SK	14,775	14,678	15,226	14,711	13,517	13,816	-6.49%
YT	397	445	495	442	452	445	12.09%
CA	**366,959**	**346,662**	**334,563**	**323,448**	**315,841**	**312,432**	**-14.86%**

Source: AWCBC Key Statistical Measures 2000 - 2005

Lost-Time Claims - Self-Insured Employers

	2000	2001	2002	2003	2004	2005	% change
AB	234	206	853	768	856	845	261.11%
BC	3,390	3,948	2,592	2,112	2,076	1,985	-41.45%
MB	1,869	1,821	1,719	1,810	1,898	1,998	6.90%
NB	856	964	834	877	850	850	-0.70%
NL	398	377	345	418	342	389	-2.26%
NS	685	781	591	667	645	639	-6.72%
NT/NU	11	29	36	18	26	15	36.36%
ON	15,205	15,109	14,579	15,282	14,865	15,850	4.24%
PE	182	169	134	115	81	72	-60.44%
QC	2,543	2,763	2,531	2,776	2,659	2,501	-1.65%
SK	170	387	397	424	363	354	108.24%
YT				Not applicable			
CA	**25,543**	**26,554**	**24,611**	**25,267**	**24,661**	**25,498**	**-0.18%**

Source: AWCBC Key Statistical Measures 2000 - 2005

Client Satisfaction

The New Brunswick Client Satisfaction Index examines injured workers' and employers' satisfaction with the Commission's delivery of service specifically as it relates to professionalism, willingness to listen, level of understanding, accuracy of information provided, amount of benefits, communications, timeliness of handling claims, promptness of service, respect, fairness, competency, and effective problem solving.

The WHSCC aims for annual client satisfaction results to be at least as high as the most recent five-year average by client group.

In 2006, 81 percent of injured workers indicated that they were satisfied with the Commission's delivery of service. This was a small decline from the 2005 level, and slightly below the five-year average of 82.4 percent.

Injured Workers' Satisfaction Index (Weighted for importance)

2002	2003	2004	2005	2006	Five-year average
81%	81%	87%	82%	81%	82.4%

Source: 2006 WHSCC Stakeholder Report

In 2006, 84 percent of registered employers reported that they were satisfied with the Commission's service delivery. This was unchanged from the 2005 level, and slightly below the five-year average of 85.4 percent.

Employers' Satisfaction Index (Weighted for importance)

2002	2003	2004	2005	2006	Five-year average
85%	89%	85%	84%	84%	85.4%

Source: 2006 WHSCC Stakeholder Report

Discussion of Key Issues

The Independent Review Panel heard differing viewpoints on the return to the pre-1993 definition of accident and standard of proof. There were views on whether or not entitlement should be contingent on the establishment of a work activity as the predominant cause of injury or disease. The Panel does not have any empirical information of the effect on the number of claims that may be declined because of the definition/presumption provisions. The Panel would suggest an examination of this issue on whether or not there are legitimate claims being rejected.

Both the employer and worker community have expressed concern over the case management process. In 2006, the Commission created 25,203 claim files, of those accepted, 6,026 involved lost-time of at least one day. Of these, approximately 78 percent return to work within one year.

The Independent Review Panel looked at the case management process and had discussion of the more difficult cases that would require ongoing relationships with the case manager (long-term clients). The Panel is aware that the Commission has policies for medical aid principles and standards of care. The Commission's Chief Medical Officer directs the standards of care and treatment of injured workers. Furthermore, a thorough assessment to determine the extent to which a standard of care is applicable to an individual is considered essential.

The case manager is part of a team that oversees the delivery of services for longer-term clients and is one of the key players in the system. During our consultations the Independent Review Panel heard representation that the WHSCC should consider leaning the case management process and restructuring existing resources to ensure reasonable caseloads and support services. These suggestions have merit and the Panel believes the WHSCC should review the case management process and the possible reallocation of resources that would more effectively respond to the needs of workers and employers and allow for more personal service.

Case managers...primary interface with the injured workers...

During our consultation process the Independent Review Panel heard from injured workers that case managers sometimes treated them disrespectfully. Treating claimants with respect is important yet recognizing it is sometimes difficult. Case managers operate as part of a multidisciplinary collaborative team, but they are the primary interface with the injured worker. The injured worker often finds dealing with bureaucracy both a time-consuming and frustrating experience. This frustration is compounded by medical issues, dealing with physicians and possible financial stress and may be taken out on the case manager. The Panel believes that case managers need on-going training to help them better deal with difficult communications with injured workers. Furthermore, mediation should be offered when the client/case manager relation becomes dysfunctional.

The stress of dealing with the claims process can be lessened if the case manager and the injured worker establish an effective relationship from the outset. The Panel considers it important that the case manager ensures that an injured worker who submits a major lost-time claim has been provided with and understands the *Worker's Compensation: A Guide for New Brunswick Workers.*

As previously noted, the principal method used by the WHSCC to process a claim resulting from a workplace accident is the receipt of Form 67. The Panel heard from injured workers that it was complicated to fill out this form. In 2006, the WHSCC developed in

consultation with several employers across the province, a new Form 67 for reporting workplace accidents and occupational diseases. This shorter and more simplified form still ensures that the WHSCC effectively captures the necessary information to adjudicate claims more quickly. Employers asked to further improve the service by offering it electronically.

As an employer, the WHSCC was the first to pilot the electronic Form 67. The Panel understands the commission has completed its pilot of the new electronic form and will continue to use the electronic reporting method. The Commission is now in the process of introducing the service to other New Brunswick employers for their input into the pilot phase. The City of Saint John and McCain Foods Limited are the first external employers to begin using the application.

At present, the electronic Form 67 is designed and setup for employer access only. However, it is a combined reporting form for both the employer and injured worker and allows the employer to file the application on the injured worker's behalf with their consent.

Some of the benefits of the electronic version of Form 67 are:

- It is designed so that all essential information required has been placed in mandatory fields. This will eliminate the WHSCC receiving incomplete forms and having to gather the missing information; which in turn will allow for quicker adjudication of claims.
- The electronic form is faster and will simplify the claims process for employers. Depending on how a question is answered, the user will not have to fill out unnecessary information, as they will be prompted to the next appropriate field.
- The electronic form will relieve some of the pressure relating to the mandatory three-day reporting deadline for employers.

The Independent Review Panel believes the electronic version of Form 67 should be available on the WHSCC website for all employers and workers to access.

From injury to first payment issued for all new lost-time claims was 39 days in 2006, up two days from 2005. The Independent Review Panel considers this is unacceptably high and steps must be taken to decrease this to a more reasonable level.

The Commission provides compensation to injured workers for injuries where there is objective medical evidence. Often there are different medical views especially with complex cases, i.e., pre-existing conditions. The Commission's policy is to weigh all evidence and make a decision based upon the weight of the evidence. Conflict can be minimized by improved lines of communication between the case manager and family physician or specialist.

Recommendation #32

The Independent Review Panel recommends the WHSCC direct a thorough study of the current legislative definition provisions for benefits entitlement to determine the impact of the "in the absence of any evidence to the contrary" standard.

Recommendation #33

The Independent Review Panel recommends a comprehensive review of case management policies, processes, and a restructuring of resources to ensure reasonable caseloads to permit WHSCC staff to provide timely and effective transition services to workers and their families.

Recommendation #34

The Independent Review Panel recommends the Commission provide ongoing client service training including specific training in the handling of difficult communications with injured workers.

Recommendation #35

The Independent Review Panel recommends the Commission offer mediation when the client/case manager relation becomes dysfunctional.

Recommendation #36

The Independent Review Panel recommends the WHSCC establish an ongoing awareness and educational campaign for both workers and employers directed to ensure both parties know and understand their claims reporting responsibilities and rights.

Recommendation #37

The Independent Review Panel recommends that once the Form 67 pilot project with pilot employers has been completed and assessed, the electronic version should be available on the WHSCC website for all employers and workers to access. Furthermore, technical assistance should be available to those who are not fully conversant with the use of computers to assist with completing the form.

Recommendation #38

The Independent Review Panel recommends the WHSCC undertake a process to maximize efforts to ensure the time to first payment for new lost-time claims is at a minimum.

Return to Work

The number of injured workers in New Brunswick that were able to return to work within 20 to 520 days has remained relatively consistent over a five-year period (2002 to 2006), although those returning to or fit to return to work within 80 to 130 days has been decreasing since 2005. Approximately 80 percent of injured workers return to work or are fit to return to work in less than three months (see following table).

Percentage returning to or fit to return to work within:	2002	2003	2004	2005	2006
20 days	60.6%	58.8%	59.0%	61.2%	61.6%*
80 days	80.3%	79.0%	79.6%	80.8%	78.1%*
130 days	87.3%	88.4%	87.7%	88.2%	82.9%*
260 days	93.9%	94.6%	94.3%	94.3%	N/A
520 days	96.4%	96.9%	96.9%	N/A	N/A
Percentage not fit to return after more than 520 days	3.6%	3.1%	3.1%	N/A	N/A

* Some claims are still in treatment and rehabilitation as of December 31, 2006.

Source: 2006 WHSCC Annual Report

Factors affecting claim duration include: access to medical services, seriousness of the injury, worker's age, worker's health, case management practices, employer re-employment practices, and worker job satisfaction.

The duration of a claim is related to the effectiveness of return to work efforts.

The duration of a claim is related to the effectiveness of return to work efforts. Most jurisdictions have been showing a decrease in claims duration, although Nova Scotia, Québec, and Yukon are showing increases. New Brunswick has shown an increase in claims duration of 14.69 percent during the period 2000 to 2005 (see following table).

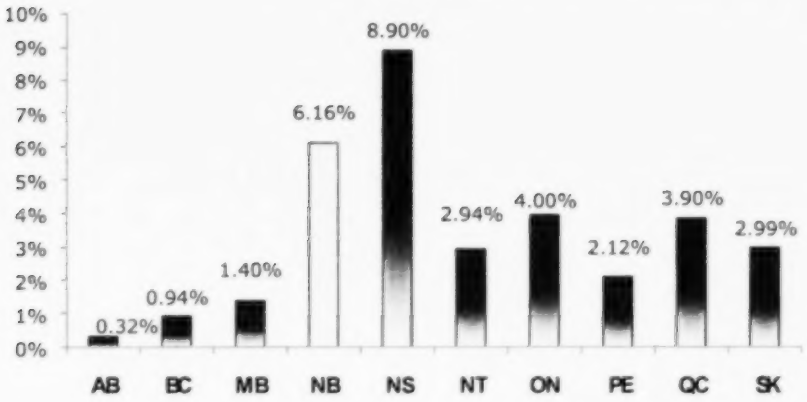
Claim Duration before Returning to Work

	2000	2001	2002	2003	2004	2005	% change
AB	65.00	77.37	77.81	73.80	62.20	52.98	-18.49%
BC	69.20	68.53	64.60	62.30	61.50	59.70	-13.73%
MB	61.10	58.70	57.50	57.30	58.30	60.38	-1.18%
NB	89.67	100.73	97.08	97.58	101.26	102.84	14.69%
NL	133.23	115.92	106.98	104.61	102.31	102.73	-22.89%
NS	85.54	102.41	94.19	100.46	107.74	114.14	33.43%
NT/NU	U/A	U/A	U/A	62.80	52.10	43.60	-30.57%
ON				U/A			
PE	71.03	66.65	55.41	55.35	68.32	52.31	-26.36%
QC	66.94	73.36	75.89	81.25	82.00	82.46	23.18%
SK	49.62	57.10	55.75	50.33	45.76	42.67	-14.01%
YT	56.07	41.15	41.09	42.01	53.29	56.96	1.59%

Source: AWCBC Key Statistical Measure 2000-2005

In 2006, the number of lost-time claims receiving wage-loss benefits at the end of the second year after the accident year varied across jurisdictions from 0.32 percent in Alberta to 8.9 percent in Nova Scotia (see following graph). Note that information was not available for all jurisdictions. This indicator is used to measure the extent to which injured workers are unable to return to work in the longer term. In New Brunswick, the number of lost-time claims receiving wage-loss benefits at the end of the second year after the accident year was 6.16 percent.

2006 Claims Open after Two Years



Source: AWCBC Key Indicators - December 2007

In 1998, the Board of Directors approved its "Return to Work Goal", which focuses on decreasing the time by which injured workers return or are ready to return to work. This shifted the Commission's strategic direction for preparing injured workers to be ready to return to work, to include actively promoting injured workers returning to employment. This gradual shift emphasized the difference between actual return to work and becoming capable of returning to work.

The new *2007-2012 WHSCC Strategic Plan & Risk Assessment* document emphasizes the importance of return to work for injured workers including:

- Providing decentralized case management services to individual clients in the region in which they reside;
- Providing effective medical management through a continuum of care approach;
- Providing clients who have a work restriction with the opportunity to learn new skills and preparing them to re-enter the workforce; and
- Partnering with the Government of New Brunswick to educate workers, employers, and the public on the duty to accommodate requirements.

Under the *Workers' Compensation Act*, the Commission has a legislated responsibility to provide rehabilitation so that workers are capable of returning to work. In addition to meeting this responsibility, the Commission is committed to assisting workplace parties in meeting their legislative responsibilities under the *Act*, as supported by the *Human Rights Act*.

The requirements to re-hire injured workers vary across Canada. In Alberta there is no requirement under legislation to rehire although under the human rights legislation, employers have a duty to accommodate workers with disabilities. The requirement may also be based on number of workers per employer. New Brunswick requires the worker to have been employed by the accident employer (if 10 or more workers) for at least one year before the employer is required to re-hire.

..under the human rights legislation, employers have a duty to accommodate workers with disabilities.

The Commission may provide a range of rehabilitation services that will help minimize injured workers' loss of earnings by assisting them to return to work at "suitable employment". This is described in Policy 21-417: Identifying Suitable Employment as:

> Appropriate employment that a worker who suffered a personal injury by accident is capable of doing, considering the worker physical abilities and employment qualifications and which does not endanger the health, safety or physical well being of the worker.

The Commission has identified three phases of rehabilitation: acute, sub-acute, and chronic. Most injured workers do not go through all phases and the actual timing of interventions and rehabilitation activities vary according to the injured worker's medical condition and rate of recovery.

Rehabilitation or rehabilitation plans may, however, be brought to an end at any time during the three phases identified above when:

- The injury no longer prevents the injured worker from safely resuming pre-accident work activities;
- The injury has reached a medical plateau and the Commission determines the injured worker's estimated capable earnings; or
- The vocational plan is completed or discontinued and the Commission determines the injured worker's estimated capable earnings.

The Commission has a number of policies related to return to work: Return to Work – Responsibilities and Re-employment Obligations, Third Party Mediation, and Identifying Suitable Employment. In June 2005, the Board of Directors approved Policy No. 21-418: Return to Work (RTW) Incentive Policy. The Board was concerned that without the development of such incentives, injured workers would be discouraged in their attempts to return to work as benefits are reduced dollar for dollar by earnings received. The intention is to build incentives for injured workers that would help facilitate their transition

back to work by allowing them to continue to receive some benefits or money from the Commission in addition to their earnings for a defined period of time.

> Results show that, over time, 97 percent of injured workers return to work or are fit to work at time of claim closure; 3 percent are unable to. Half of that number (1.5 percent) withdraw from the workplace, die or leave the workforce for personal reasons other than the injury. This number remains largely unchanged over the past five years, but there is improvement (to 3.0 percent from 3.8 percent) in the latest period for which complete data is available (2003 accidents).[4]

As seen in the following table, the proportion of workers who return to work has remained relatively constant from 2002-2006.

Case Managed Injured Workers with Lost-Time Claims

	2002	2003	2004	2005	2006
Returned to work	77.9%	77.4%	77.8%	79.8%	77.9%
Ready to return to work	7.0%	6.3%	6.4%	5.8%	5.2%
Closed for other reasons	8.2%	8.5%	8.2%	8.1%	8.6%
LTD (full or partial)	6.9%	7.9%	7.6%	6.3%	8.3%

Source: 2006 WHSCC Annual Report

The types of return to work programs vary across jurisdictions. Alberta appears to be the only other jurisdiction that offers a multidisciplinary program approach similar to New Brunswick's. In most jurisdictions referral to a return to work program is through a case manager with the average wait time to start the program from date of referral of three working days to 12 months and is 2.5 weeks in New Brunswick (see following table).

[4] 2006 WHSCC Stakeholder Report, p. 14.

Return to Work Jurisdictional Review

	Percentage Ready to Return to Following a Multidisciplinary Program	Average Wait Time for Service (Date of Referral to Starting of Program)	Agencies / Persons giving the Referrals	Injured Workers' Satisfaction with RTW Program
NB	97%	2.5 weeks	Case Manager	90% (2006)
NS	Medium & High Risk Levels: 85.05% High Only: 69.01%	Program to start as early as possible once verbal assessment (approx. 20 days) report provided to case worker.	Adjudicator / Case Manager	75% (2006)
BC	Pain Management Program: 82.7% ready to return to work.	413 calendar days from date of injury to referral; 16 calendar days from referral to admission.	Case Manager	85%
AB	Complex RTWs: 72.2%; Provider-Based RTWs: 40.5%; Work Site-based RTWs: 11.7%	Target of 3 working days from the confirmed referral date.	Case Managers / Claim Owners	86.1%
SK		Clinics are expected to intake the worker within one week of WCB referral.	Health Services Unit on behalf of case management team	Planned for 2008
MB	No formal multidisciplinary treatment program	N/A	Case Manager / WCB medical advisors	No Stats available.
NT / NU	Not available – data not collected	Not available – data not collected	Case Manager through Vocational Rehabilitation Consultant contracted directly to the WCB	No statistics available
YT	Unavailable	Unavailable	Unavailable	Unavailable
ON	Unavailable	Unavailable	Unavailable	Unavailable
QC	No Stats	No Stats	Case Manager	No Stats
NL	Multidisciplinary program is an assessment program rather than a treatment program. It is an early intervention program (8– 16 weeks post-injury).	The average wait time from referral to admission to the early intervention multidisciplinary program is approximately 2 weeks, but can vary depending on the volume we refer.	The referral itself will be prepared and sent from the Case Manager.	No Stats
PE	Data not available	Varies. At least 1 – 2 years	Case manager	80%

Source: email / telephone requests to WCBs – November 2007

Discussion of Key Issues

The duration of claims results reported across Canada may be influenced by a number of factors including:

- A low injury frequency is usually associated with higher relative duration;
- The waiting period in New Brunswick and Nova Scotia results in lower claims frequency;
- Differences in the population covered including the low scope of coverage in Manitoba and Saskatchewan; and
- Differences in economic conditions.[5]

New Brunswick's claim duration before returning to work is longer than most jurisdictions and increased substantially between 2000 and 2005 from 89.67 to 102.84 days or an increase of 14.69 percent. Claim duration may be improved by enhanced partnerships with hospitals and health care providers to facilitate return to work.

An important return to work goal of the WHSCC is to decrease time by which workers return or are ready to return to employment. The Commission's objective is to facilitate early and safe return to work for injured workers by working with and encouraging workplace parties to work cooperatively through rehabilitation.

The Independent Review Panel heard that joint return to work committees should be established in the workplace. This may be one way to facilitate safe and early return to work. Also, the incorporation of a goal of retraining for jobs that are suitable and reasonably available should be considered in developing a re-employment plan.

When the injured worker and the accident employer are unable or unwilling to resolve return to work issues independently, the Commission may assist the workplace parties to resolve the dispute by:

- Working with the workplace parties to identify and communicate options or alternatives that would meet the needs of both parties; and/or
- Arranging for a third party mediator to assist the parties in resolving the issue.

A number of injured workers expressed to the Panel the need for increased support by employers and the WHSCC to the injured worker. No one party can make significant progress in decreasing claim duration without acceptance by both the employer and the worker involved with the claim. All parties need to be fully engaged. NB Power is an example of an employer who, through a comprehensive program

[5] Morneau Sobeco, Report on Certain Coverage, Benefit Provisions and Operational Aspects of Current System, January 2008, p. 23.

called Healthy Employees through Accommodation and Learning (HEAL), keeps the injured worker engaged with the workplace through visits and providing work at home if unable to be at the workplace, such as paper work, review of work processes, and delivery of training packages.

Under the *Workers' Compensation Act*, employers with 10 or more workers have a legislative responsibility to re-employ injured workers in:

- The same or equivalent job if the injured worker is capable of performing the required duties; or
- Suitable employment that may become available with the employer, with no loss of seniority or benefits if the injured worker is incapable of performing the required duties of the pre-accident job.

A number of employee groups advocated strengthening return to work legislation and enhancing the Commission's lead in return to work activities. The respective roles of parties in achieving safe and early return to work following a longer term claim are reflected in the obligations of parties under the *Human Rights Code* (accommodation) and as set forth under the *Workers' Compensation Act*. The Independent Review Panel believes the legislation should clarify that the return to work provisions in the *Act* do not relieve employers, unions and workers from fulfilling their obligations regarding accommodation and return to work as required by the *Human Rights Code*. Furthermore, the WHSCC should widely distribute established guidelines confirming this clarification. Where conflict arises over the obligations or rights around the return to work processes, a WHSCC-facilitated mediation process could assist parties in finding resolution.

The Independent Review Panel also believes the WHSCC should be more actively engaged with the medical community to expedite workers to early and safe return to work. Finally, the Panel would encourage the Commission to develop return to work incentives for smaller employers.

Recommendation # 39

The Independent Review Panel recommends the following principle be added to the Commission's goals when developing a re-employment plan: "Retraining for current jobs that are suitable and reasonably available."

Recommendation # 40

The Independent Review Panel recommends the WHSCC encourage stakeholders to establish joint return to work committees in the workplace.

Recommendation # 41

The Independent Review Panel recommends that WHSCC direct an information/education process as to the rights and responsibilities of employers and workers, as well as the enforcement of responsibilities regarding the re-employment obligation.

Recommendation # 42

The Independent Review Panel recommends the legislation to be clarified to confirm that the return to work provisions in the Act do not relieve employers, unions, and workers from fulfilling their obligations regarding accommodation and return to work as required by the Human Rights Code.

Recommendation # 43

The Independent Review Panel recommends that when communication between workplace parties ceases, or if workplace parties are not cooperating in a re-employment process, the Commission may implement third party mediation to help workplace parties find a resolution.

Recommendation # 44

The Independent Review Panel recommends developing return to work incentives for smaller employers.

Health Care and Rehabilitation – New Brunswick

The WHSCC has the legislated authority to determine the necessity, character, and sufficiency of all medical aid services provided so that injured workers can recover from their injuries and return to work as soon as possible.

In 2006, approximately one-third (31.5 percent) of the Commission's expenditures were related to health care. As the cost of public health care rises, the Commission must ensure that injured workers receive timely treatment that is appropriate for their injuries and is attained at a reasonable cost. The Commission may arrange for an injured worker to receive treatment or services in another location, including out of the province, if local sources of services are unavailable or delayed.

The workers' compensation system...relies on the provincial health care system for access to services...

The right care, by the right provider, for the right cost helps to maximize return to work opportunities, minimize economic loss for both workers and employers, and stabilize costs to the Commission so that comprehensive benefits can be maintained.[6]

The workers' compensation system operates outside the *Canada Health Act,* but relies on the provincial health care system for access to

[6] 2007-2012 WHSCC Strategic Plan & Risk Assessment, p. 8.

services such as diagnostic testing, examinations by doctors and specialists, and access to surgical interventions. The New Brunswick health care system continues to face major challenges including:

- Rising health care and prescription drug costs;
- Accessing health care;
- Increasing wait times; and
- Recruiting and retaining health care professionals.

The WHSCC Board of Directors has established policies on medical aid principles, standards of care, and evidence of medical effectiveness to help mitigate these risks. In addition, the Commission has developed several initiatives to increase access to health care and reduce costs including:

- Establishing a Cadre of Physicians;
- Implementing a formulary and electronic pay system;
- Paying for injured workers to travel outside New Brunswick for expedited care;
- Establishing a managed care model; and
- Evaluating medical effectiveness of continued treatments; i.e., physiotherapy.

Moreover, guidelines were completed in October 2007 for managing the use of opioids (narcotics) and are expected to help the Commission monitor and control the rising costs of prescription drugs.

In New Brunswick, the Commission does not have an approved physician list and allows injured workers to select their family physicians. All other health care providers must be listed with the Commission in order to be reimbursed for the services they deliver to injured workers (Policy No. 25-001.25: Listing and Delisting of Health Care Providers).

In 2006, the WHSCC established a network of six family physicians with special training in work-related injuries to provide continuity of care for claimants without family physicians. They are located in Edmundston, Moncton (2), Saint John, and Fredericton (2). The Commission provides training to these physicians on employment-related health issues.

The WHSCC Continuum of Care Model

The WHSCC's "Continuum of Care" model for case management is a multidisciplinary, incremental care, and treatment approach to getting an injured worker safely back to employment at the earliest possible opportunity.

The Continuum of Care model is applied to all lost-time claims for which physical rehabilitation is indicated. Injured workers progress through the stages of treatment based on their recovery as determined by the care plan developed with the worker, employer, and worker's physician. For example, many injured workers only require

treatment in the acute phase of their injury and are able to resume work following this treatment. More complex cases continue to require treatment into the sub-acute phase of recovery to assist in return to work. A small percentage of injured workers develop a chronic condition and require treatment for this phase. The Commission assesses the injured worker at each stage along the continuum to determine individual appropriateness for specific interventions.

WHSCC uses approved local service providers for physiotherapy, occupational therapy, acupuncture, work conditioning, and so forth, in a number of areas of the province in addition to the services offered at the Workers' Rehabilitation Centre.

Other resources used by the Commission that are not part of the staff at the Workers' Rehabilitation Centre include 11 occupational therapists employed full-time in the regions and who work with case managers to assist in clients' return to work. Nurse consultants, rehabilitation specialists, occupational hygienists, and physiotherapists are also employed in administration and consultation roles, to assist in determining best practices.

The WorkSafe Services Division conducts program evaluations to ensure quality service and to identify opportunities for improvement. In 2006 these included audits of: physiotherapy clinics, gradual return to work services, chronic pain services, and work capacity evaluation services.

New Brunswick's Rehabilitation Centre (WRC)

...WRC is a specialized occupational rehabilitation centre...

The Workers' Rehabilitation Centre is a specialized occupational rehabilitation centre located in the community of Grand Bay-Westfield. It is structured as a department and reports to the President/CEO of WHSCC. The Workers' Rehabilitation Centre has treated injured workers since 1965. The Centre's 81 staff members support the Commission in achieving its goals to decrease the time by which injured workers return or are ready to return to work by offering injured workers an intensive, multidisciplinary approach to rehabilitation.

Staff at the Workers' Rehabilitation Centre includes nurses, physicians, occupational therapists, physiotherapists, prosthetists/orthotists, psychologists, social workers, and dietitians.

The Workers' Rehabilitation Centre is accredited by the Canadian Council on Health Services Accreditation. In September 2007, the Canadian Association of Rehabilitation Facilities (CARF) accredited for a three year period the following programs and service offered at the Workers' Rehabilitation Centre: Comprehensive Occupational Rehabilitation Programs; General Occupational Rehabilitation Programs; and Employment Services: Comprehensive Vocational Evaluation Services.

The Workers' Rehabilitation Centre offers clients three programs:

1. **Work recovery** – a teamwork approach to expedite return to the workplace. The Workers' Rehabilitation Centre is the main provider of this service, however, contracts also exist with private clinics to offer work conditioning services.
2. **Vocational evaluation** – determines the functional ability of an injured worker.
3. **Assistive devices** – makes and fits splints, braces, and artificial limbs.

Total health care expenses for the Commission in 2006 amounted to $60.947 million. Included was $8.2 million for services provided by the Workers' Rehabilitation Centre of which approximately $7.7 million was for treatment services provided to injured workers referred by the Commission. The remaining $0.5 million included staff salaries and administration costs.

As seen in the following table, Workers' Rehabilitation Centre costs have seen a slight increase (3.8%) since 2002 with a significant increase in building operations.

WHSCC Financial Statements - Workers' Rehabilitation Centre (breakdown of cost)

	2002	2003	2004	2005	2006
Salaries and employee benefits	$ 4,323,573	$ 4,960,292	$4,956,289	$ 4,895,675	$4,883,964
Depreciation	$ 74,711	$ 92,851	$ 92,537	$ 109,480	$ 118,472
Professional Fees	$ 69,313	$34,651	$ 35,916	$ 50,833	$ 27,958
Office and Communications	$ 293,663	$292,950	$ 288,068	$ 320,130	$ 261,137
Building Operations	$ 43,461	$ 201,807	$ 201,624	$ 187,843	$ 205,683
Travel and Vehicle Operations	$ 27,394	$19,275	$ 20,571	$ 17,893	$96,164
Education and Training	$ 137,374	$78,413	$ 100,754	$ 91,358	$99,447
Other	$ 42,035	$ 25,643	$22,605	$10,779	$ 14,506
Occupancy Charge	$ 2,396,170	$ 1,976,532	$ 1,951,763	$ 1,977,585	$ 1,978,555
Total Treatment Services by WRC	**$7,407,694**	**$7,682,414**	**$7,670,127**	**$7,661,576**	**$7,685,886**

Source: Information provided by WHSCC

The Pain Management Program was originally located in the Workers' Rehabilitation Centre in Grand Bay. In January 2006, a Pain Clinic was set up in Moncton as a pilot-project to ensure providing the right treatment, at the right time, at the right cost. The outcomes in the Moncton Pain Management Program were relatively the same as the Workers' Rehabilitation Centre Pain Management Program. The Commission indicated that research conducted by WorkSafe Services

Division determined the best practice model for delivering treatment for chronic pain was an integrated multidisciplinary program incorporating a functional restoration approach. Therefore, services for the treatment of chronic pain have been incorporated into the Workers' Rehabilitation Centre Work Hardening Program as opposed to a stand-alone chronic pain program.

From November 2005 to December 2006, a pilot multidisciplinary Augmented Work Conditioning service was offered. Its purpose was to increase return to work rates and decrease claim duration and costs by effectively addressing psychosocial barriers to return to work, using a cognitive behavioral approach combined with individualized treatment. The results showed that this approach was more effective in returning injured workers to work and decreasing time on claim for complex clients who were disabled by pain. The Commission's recommendation following the pilot service was to refer clients to multidisciplinary treatment, incorporating approaches developed in the Augmented Work Conditioning pilot.

Alberta WCB – Millard Health Centre

Alberta is the only other jurisdiction in Canada that has a rehabilitation centre for occupational injuries. It has been wholly owned by the Alberta Workers' Compensation Board (WCB) since 1952. The WCB is legislatively required under its *Workers' Compensation Act* to provide physical, social, psychological, vocational, and other rehabilitative services to assist injured workers. The Millard Health Centre fulfils that mandate through the direct and indirect provision of these services and contracts with over 18,000 health care providers across the province in meeting the needs of injured workers.

They have six service areas: Assessment Services, Medical Services, Prevention and Work Site Services, Interdisciplinary Rehabilitation Services, Complex Interdisciplinary Rehabilitation Services, and Vocational and Training Services. A variety of organizations benefit from the services, including: workers' compensation organizations, insurance companies, legal firms, government agencies, and employers.

Health Care and Rehabilitation - Canada

As previously mentioned, it is the responsibility of Workers' Compensation Boards to pay for health care costs. Delivery of these services is through the public health care system, either through public physicians or public hospitals.

Workers' Compensation Boards in New Brunswick, Alberta, British Columbia, and Manitoba permit the injured worker to select a family physician. However, injured workers in Nova Scotia are responsible to ensure the provider visited is a WCB-approved provider and that they are accepting new WCB claims. In all jurisdictions, hospital physician visits are charged at a higher rate than office visits.

Each jurisdiction defines with its physician group whether a service should be paid under a fee-for-service plan payment or an alternative plan payment. Thus, one jurisdiction may pay for a service through the fee-for-service plan, whereas another jurisdiction may pay for the same service within an alternative plan. These variations across jurisdictions can impact average payment.

In New Brunswick, the Commission pays the same for in-patient or out-patient per diem rates for treatment and services provided by hospital facilities as other users of the provincial health care system. Most jurisdictions either pay their provincial health rates or the inter-provincial health rates for treatment and services provided by hospital facilities.

From 2001 to 2005, gross fee-for-service payments for procedures (other than consultations and visits) increased by 17.9 percent, and the associated services by 16.6 percent.

Accessing health care continues to be a challenge for all jurisdictions. Statistics Canada provides information regarding patients' experiences accessing care at the national and provincial levels including how long individuals waited for specialized services. The results for 2005 indicate that waiting for care remains the number one barrier for those having difficulties accessing care.

Patients' views about waiting for care have remained fairly stable between 2003 and 2005. While 70 to 80 percent indicated their waiting time was acceptable - there continues to be a proportion of Canadians who feel they are waiting an unacceptably long time for care.

..waiting for care remains the number one barrier for those having difficulties accessing care.

The percentage of the population with difficulties accessing immediate care for a minor health problem in 2005 ranged from 15 percent in Yukon to 33.3 percent in Northwest Territories. In New Brunswick, it was 20.9 percent slightly below the Canadian average of 21.4 percent (see following table).

Access to Health Care Services
Household Population Aged 15 and Over - 2005

	Population Reporting a Regular Family Physician		Percent Population with Difficulties Accessing Immediate Care for a Minor Health Problem, Among Those Who Required Care at Any Time of Day
	Percent with Regular Family Physician	Percent without Regular Family Physician	
NL	89	11	23
PE	89.9	10.1	30.4
NS	95.1	4.9	24.1
NB	92.6	7.4	20.9

	Population Reporting a Regular Family Physician		Percent Population with Difficulties Accessing Immediate Care for a Minor Health Problem, Among Those Who Required Care at Any Time of Day
	Percent with Regular Family Physician	Percent without Regular Family Physician	
ON	91.6	8.4	22.6
MB	84	16	23.6
SK	84.8	15.2	16.5
AB	84.2	15.8	19.2
BC	89.8	10.2	17.8
YK	76.1	23.9	15
NWT	53	47	33.3
NU	12.6	87.4	19.5
CA	86.4	13.6	21.4

Sources: Statistics Canada, Canadian Community Health Survey, 2005 (CANSIM table 105-3024, 105-3069)

In October 2007, the Fraser Institute released its 17th annual edition of *Waiting Your Turn: Hospital Waiting Lists in Canada.*

Overall Waiting Times

Ontario recorded the shortest waiting time overall (the wait between visiting a general practitioner and receiving treatment), at 15 weeks, followed by British Columbia (19 weeks) and Québec (19.4 weeks).

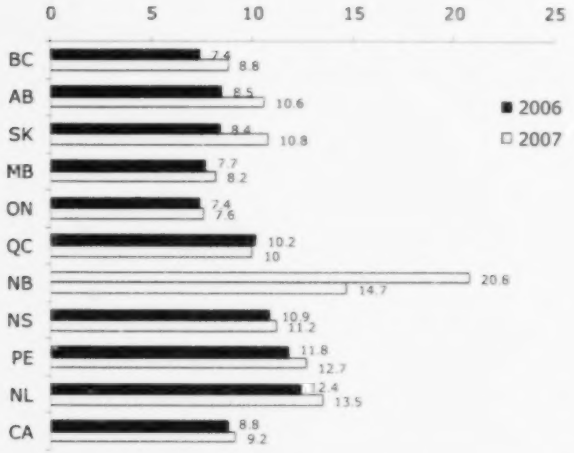
Saskatchewan (27.2 weeks), New Brunswick (25.2 weeks), and Nova Scotia (24.8 weeks) recorded the longest waits in Canada.

Consultation with a specialist

The waiting time between referral by a general practitioner and consultation with a specialist increased to 9.2 weeks from the 8.8 weeks recorded in 2006. The shortest waits for specialist consultations were in Ontario (7.6 weeks), Manitoba (8.2 weeks), and British Columbia (8.8 weeks).

The longest waits for consultation with a specialist were recorded in New Brunswick (14.7 weeks), Newfoundland and Labrador (13.5 weeks), and Prince Edward Island (12.7 weeks) as shown in the following graph.

Weeks Waited from Referral by GP to Appointment with Specialist

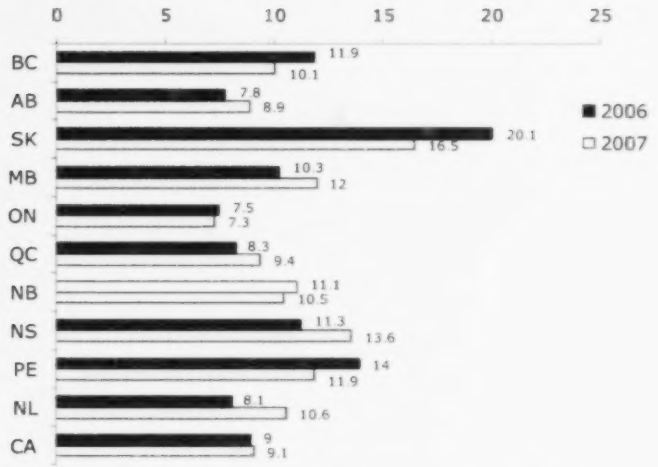


Source: The Fraser Institute - Critical Issues Bulletin, p. 26

Specialist consultation to treatment

The waiting time between specialist consultation and treatment—the second stage of waiting—increased to 9.1 weeks from 9 weeks in 2006. The shortest specialist-to-treatment waits as shown in the following graph were found in Ontario (7.3 weeks), Alberta (8.9 weeks), and Québec (9.4 weeks), while the longest waits were in Saskatchewan (16.5 weeks), Nova Scotia (13.6 weeks), and Manitoba (12.0 weeks). New Brunswick's wait time was 10.5 weeks.

Weeks Waited from Appointment with Specialist to Treatment 2006-2007



Source: The Fraser Institute - Critical Issues Bulletin, p. 26

Waiting for Diagnostic and Therapeutic Technology

The median wait for a CT scan across Canada was 4.8 weeks. British Columbia, Alberta, Ontario, New Brunswick, and Nova Scotia had the shortest wait for CT scans (4 weeks), while the longest wait occurred in Manitoba (8 weeks).

The median wait for an MRI across Canada was 10.1 weeks. Patients in Ontario experienced the shortest wait for an MRI (7.8 weeks), while Newfoundland and Labrador residents waited longest (20 weeks). New Brunswick's wait for an MRI was 8 weeks in 2007, two weeks less than in 2005 (see following table).

Weeks Waited to Receive Selected Diagnostic Tests in 2005, 2006 and 2007

	CT-Scan			MRI		
	2007	**2006**	**2005**	**2007**	**2006**	**2005**
BC	4.0	5.0	5.0	12.0	12.0	12.0
AB	4.0	4.0	5.5	10.0	9.0	10.0
SK	5.5	5	8	12	12	24
MB	8.0	6.0	6.0	8.0	10.0	10.0
ON	4.0	4.0	6.0	7.8	8.0	11.5
QC	6.0	4.0	5.0	12.0	12.0	12.0
NB	4.0	5.0	4.0	8.0	9.0	10.0
NS	4.0	4.0	4.0	10.0	8.0	9.0
PE	6.5	9.0	4.0	12.0	13.0	5.0
NL	5.8	5.0	5.5	20.0	28.0	36.0
CAN	4.8	4.3	5.5	10.1	10.3	12.3

Source: The Fraser Institute - Critical Issues Bulletin, p. 32

Discussion of Key Issues

The Independent Review Panel heard that in the northern part of the Province access to health care was an issue, as well as a need to establish a rehabilitation centre or equivalent services in that region of the Province. The Panel also heard that health care delivery should be offered in an injured worker's hometown if possible and that the Commission should pursue contracts with medical professionals to give priority to WHSCC clients.

The Panel understands efforts to make arrangements for expedited services such as MRIs and rehabilitation services have been frustrated by barriers to accessing these services, especially in rural areas of the Province. This has added to the challenges in providing care locally, not only for cost reasons, but social reasons. Receiving health care

delivery in an injured worker's hometown is less stressful, provides local support, is a more direct road to recovery, and encourages earlier return to work. It is clear that waiting times for treatment will have a direct impact on claims as workers must wait for treatment before rehabilitation and return to work efforts.

Employers pay wage-loss benefits while waiting in the provincial health care queue. The overall waiting time between visiting a general practitioner and receiving treatment in New Brunswick is 25.2 weeks, among the longest in Canada.

The Independent Review Panel does not have ready answers to physician retention, wait-times, and other issues related to the provincial health care delivery system. The Commission has made concerted efforts to ensure appropriate rehabilitation, but does rely on the provincial medical infrastructure for medical services as a purchaser of these services. The Panel suggests that the Commission diligently undertake a cost-benefit analysis and encourages them to explore all options available such as off-hours use of equipment, offering services in ones hometown when available, and so forth, to expedite services with the goal of a safe and early return to work. Making creative arrangements with service providers and facilities within the provincial health care system would expedite waiting times for treatment of injured workers.

Although the Department of Health has the responsibility for health care delivery in New Brunswick, the Panel encourages Government to remove all barriers to making these arrangements without affecting the integrity of the public system.

During the consultation process the Independent Review Panel was informed that a Pain Clinic in Moncton provided services to injured workers, but has ceased its operations. In addition to providing chronic pain service as part of their multidisciplinary program offered at the Workers' Rehabilitation Centre, the Panel understands that the Commission has contracts with chronic pain service providers in various regions of the province. The effectiveness of these measures should continue to be regularly assessed.

The Independent Review Panel had representation that a "value for money" audit should be undertaken at the Workers' Rehabilitation Centre to determine if the services could be provided more cost effectively by other parties.

The Panel noted that Alberta's Millard Health Centre offers six service areas compared to three programs offered at New Brunswick's Workers' Rehabilitation Centre. Alberta also engages a large network of health care providers across the province - over 18,000. The Independent Review Panel heard from the WHSCC that it is aware there is a need for more medical involvement at the Workers' Rehabilitation Centre. Although costs to operate the Workers' Rehabilitation Centre have risen only slightly over a five-year period

(2002-2006), the building operations costs have increased by almost 375 percent.

The Independent Review Panel suggests the Commission undertake a "value for money" audit to determine if services could be provided more cost effectively. Perhaps the Workers' Rehabilitation Centre could become a centre for excellence for occupational injuries.

Recommendation #45

The Independent Review Panel recommends the Commission engage in a process to establish new arrangements and partnerships with facilities within the provincial health care system to facilitate timely medical diagnosis, treatment, and rehabilitation throughout New Brunswick.

Recommendation #46

The Independent Review Panel recommends that government remove barriers that impede such arrangements and partnerships without affecting the integrity of the current public health system.

Recommendation #47

The Independent Review Panel recommends the Board of Directors explore options to enhance or expand services offered at the Workers' Rehabilitation Centre with increased medical/specialist involvement.

Recommendation #48

The Independent Review Panel recommends a "value for money" audit be undertaken to determine if services could be more cost effectively provided or expanded at the Workers' Rehabilitation Centre.

Cost Trends

Health care spending is on the rise and has outpaced both inflation and economic growth.

Claim duration is increasing which directly impacts the overall cost of claims, including the health care component. Health care spending is on the rise and has outpaced both inflation and economic growth. In New Brunswick, the rate of inflation of health care is more than two times the rate of cost of living increases. The Commission's cost for providing health care has grown at a faster rate than the provincial health care system. Since 1999, the provincial government's health care expenditures have grown by more than seven percent, while the Commission's health care costs have increased on average by more than eight percent.

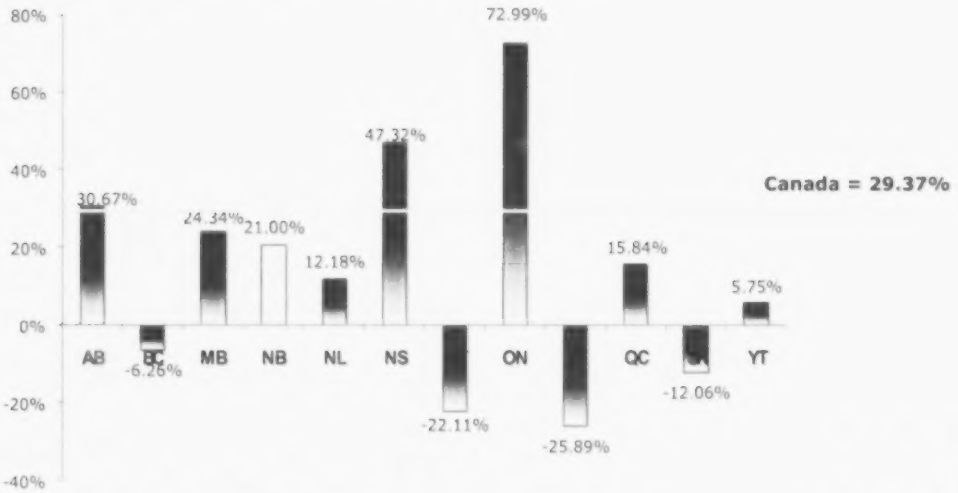
The WHSCC has three main categories of expenses: claims costs, administration costs, and the costs of legislative obligations.

As reported in the Statement of Operations and Fund Balance[7], claims costs represent costs incurred in the current year for current and prior year injuries. In 2006, these costs totaled $159.9 million, a 10.7 percent decrease from the $179.1 million incurred in 2005. The average payment per claim in 2006 was $4,432 and has been increasing since 2002 ($3,777).[8]

Claim payments represent the amounts spent on wage loss compensation to injured workers and their dependants, the health care services provided to injured workers, and any vocational rehabilitation required to return injured workers to employment. In 2006, claims payments totaled $127.2 million, a $4.9 million or four percent increase from 2005's payments of $122.3 million.

Health care and vocational rehabilitation benefit payments represent an increasing cost for most jurisdictions. As seen in the following graph, total benefit payments made for current and prior accident years for health care and vocational rehabilitation services for assessable employers ranged from a 25.89 percent decrease in Prince Edward Island to a 72.99 percent increase in Ontario from 2001 to 2005. New Brunswick's total increased by 21 percent, eight percentage points below the Canadian average.

Health Care and Vocational Rehabilitation Benefit Payments
Percentage Change from 2001 to 2005



Source: AWCBC Key Statistical Measures 2001-2005

The proportion of total benefit payments corresponding to health care and vocational rehabilitation benefits for all years paid during the year

[7] WHSCC 2006 Annual Report, p. 56.
[8] 2006 WHSCC Stakeholder Report, p. 15.

for assessable employers as seen in the following table increased by 4.35 percent from 2001 to 2005 in New Brunswick, approximately the same change as Canada (4.44 percent).

Proportion of Total Benefit Payments corresponding to Health Care and Vocational Rehabilitation Benefits

	2001	2002	2003	2004	2005
AB	31.52%	26.41%	39.33%	42.60%	44.39%
BC	29.91%	29.27%	26.84%	27.52%	28.00%
MB	24.39%	23.90%	26.42%	26.89%	28.35%
NB	27.57%	30.66%	30.27%	29.94%	31.92%
NL	29.43%	31.31%	31.72%	32.39%	32.01%
NS	23.20%	24.66%	23.83%	23.24%	20.24%
NT/NU	29.53%	32.39%	U/A	U/A	22.50%
ON	16.19%	16.96%	18.41%	22.96%	23.94%
PE	27.64%	23.67%	25.84%	25.72%	22.98%
QC	22.10%	21.93%	21.74%	22.53%	21.94%
SK	34.75%	36.17%	30.09%	30.61%	30.38%
YT	U/A	U/A	33.85%	27.20%	35.42%
CA	**22.55%**	**22.39%**	**23.44%**	**32.59%**	**26.99%**

Source: AWCBC Key Statistical Measures 2001-2005

Lost-time claims that involve serious injury, long recovery times, surgery, vocational rehabilitation, and so forth are high-risk and have significant expenses associated with them. As discussed in the Financial Performance section of the Report, average benefit costs per time-loss claims have shown significant increases over the period 2001 to 2005 in most jurisdictions. New Brunswick's current year average benefit costs per time-loss claims increased by 39.3 percent over the same five-year period.

Self-Insured Employers (Individually Liable)

All jurisdictions have self-insured or individually liable employers. These are typically federal and some provincial government institutions that bear the direct cost of their incurred claims and an appropriate share of administration costs for the jurisdiction in which they operate.

However, the following jurisdictions do not extend self-insured coverage to their provincial/territorial governments:

1. Alberta;
2. Québec;
3. Saskatchewan;
4. Northwest Territories and Nunavut; and
5. Yukon.

Alberta, Saskatchewan, Northwest Territories and Nunavut, and Yukon limit self-insured coverage to the federal government only. All workers' compensation boards administer the *Government Employees Compensation Act (Canada)* for Federal Government workers injured in their jurisdictions. Alberta administers this for the Northwest Territories, Nunavut, and Yukon. The Federal Government reimburses each jurisdiction for the cost of compensation.

Québec has a chapter in its *Act* which allows a self-insured employer to apply to become a rate-assessed/collectively liable employer. If approved, a special payment may be requested to establish a reserve to pay for the benefits owed for injuries that occurred prior to the change.

The Workers' Compensation Board of Québec, Commission de la santé et de la sécurité du travail (CSST), provides that the costs are shared among all employers where the worker may have been exposed to an occupational disease.

In Manitoba, all self-insured employers are listed in the *Workers Compensation Act*.

Example of Self-Insured Employer – New Brunswick Government

The New Brunswick Government system is an example of a self-insured employer. The *Workers' Compensation Act* legislates that the New Brunswick Provincial Government is a self-insured or individually liable employer. This means the Government does not pay assessment rates but reimburses the Commission for the actual cost of compensation paid in respect of its employees and an appropriate share of administration costs.

Health care expenses/medical aid delivery is managed for Government by the Commission according to allowances of the *Workers' Compensation Act*. Vocational rehabilitation services are managed by the Commission and delivered by the Workers' Rehabilitation Centre.

Mandate Question Overview

The Independent Review Panel was asked to assess how well does the New Brunswick Workplace Health, Safety and Compensation Commission's relationship with health care and income support providers compare to the relationships held by other Canadian workplace health, safety and compensation groups and their providers. As well, under the mandate question on coverage and benefits, the Panel was asked how well the WHSCC compared in back to work activities, which the Panel has addressed in this section of the Report.

The workers' compensation system operates outside the *Canada Health Act,* but relies on the provincial health care system for access to service. Delivery of these services is

through the public health care system, either through public physicians or public hospitals.

Workers' Compensation Boards in New Brunswick, Alberta, British Columbia, and Manitoba permit the injured worker to select a family physician rather than from Workers' Compensation Board approved provider. In all jurisdictions, hospital physician visits are charged at a higher rate than office visits.

All jurisdictions determine with their physician groups, whether a service should be paid under a fee-for-service plan payment or an alternative payment plan.

In New Brunswick, the Commission pays the same for in-patient or out-patient per diem rates for treatment and services provided by hospital facilities as other users of the provincial health care system. This is similar to other jurisdictions in Canada.

The types of return to work programs vary across jurisdictions. Alberta appears to be the only other jurisdiction that offers a multidisciplinary program approach similar to the one offered at the Workers' Rehabilitation Centre in New Brunswick - a dedicated rehabilitation facility for occupational injuries.

The Independent Review Panel recognizes that claim duration is increasing which directly impacts the overall cost of claims, including the health care component. Accessing health care continues to be a challenge for all jurisdictions. Overall waiting time between visiting a general practitioner and receiving treatment in New Brunswick is 25.2 weeks, among the longest in Canada.

Access to timely health care and rehabilitation services remain a challenge both inside and outside the workers' compensation system. Nonetheless, the Panel believes that opportunity exists for the Workplace Health, Safety and Compensation Commission to overcome some of these barriers through creative arrangements.

Appeals Tribunal

How well does the New Brunswick workplace health, safety and compensation appeal system compare in terms of processes, cost and efficiency?

Appeals Tribunal

This section discusses the Appeals Tribunal of New Brunswick's Workplace Health, Safety and Compensation Commission, the mandate question of the Independent Review Panel's Terms of Reference - How well does the New Brunswick workplace health, safety and compensation appeal system compare in terms of processes, cost and efficiency?

Background

From its inception in 1918 when the first *Workmen's Compensation Act* in New Brunswick received Royal Assent, there has been an appeals process.

The 1980 Boudreau Report discussed a number of issues regarding the appeals system including the conflicting roles of the appeals staff being responsible for the original decision and the appeal hearing. The report aimed to establish an internal adjudication/appeals system and made recommendations describing powers of adjudication officers.

In 1986, a major study of the Workers' Compensation Board was launched by the Minister of Labour as a result of concerns primarily from workers, their families, employers, unions, associations and government. The study resulted in the Woods Gordon Report of 1988.

Until 1988 the Workers' Compensation Board was composed of three appointed full-time members: Chair, Vice-chair, and Commissioner. The Board members were also involved in claims adjudication, financial administration, and appeals.

The Woods Gordon Report made a number of recommendations to address the organization of the Commission including a three-level appeals process.

> In addition to the Appeals Board coming on line as the third and final level, the Review Committee (second level of appeal) was also introduced to the appeals process, as well as a first level departmental review.[1]

The Review Committee, composed of senior and experienced staff could decide to hold public hearings or have a paper review. The first level of appeal, the departmental review, was usually conducted by the Assistant Director of the Department or the Director.

In 1991, a task force composed of staff members recommended the appeals process be restructured to provide a re-examination of the original decision upon the presentation of new evidence, followed by an appeal to the Appeals Board.

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[1] Information document provided by the Appeals Tribunal, p. 2.

Additional information could be introduced at any point in the decision process. When the final decision was rendered, and if it was not accepted by the injured worker/employer, either of them could submit an appeal to the Appeals Board.

Recommendations of the Task Force resulted in the Board moving "away from a departmental organization to one which would bring together a team of experts to deal with a claim (Case Management)."[2]

In this new process, the appellant had the right to request and receive a hearing. In addition to the hearing, there were three options through which an appeal could be pursued: consultation resolution, inquiry/research based policy review, and reconsideration.

In September 1994, the Workers' Compensation Board and the Occupational Health and Safety Commission merged. It included the establishment of the current Appeals Tribunal under the *Workplace Health, Safety and Compensation Commission Act*. The Appeals Tribunal functions as an administrative, quasi-judicial, body which reviews decisions made by the WHSCC at the request of unsatisfied clients – workers and employers.

At the time of the merger a committee was struck to address issues associated with the new Commission. Legislation was amended and included the following changes in the appeals system:

- The Chairperson of the Appeals Tribunal would sit as a non-voting member of the newly formed Workplace Health, Safety and Compensation Commission (WHSCC) Board of Directors;
- The Chairperson of the Appeals Tribunal would be responsible to the Board of Directors for the operations of the Appeals Tribunal within the guidelines established by the WHSCC Board of Directors;
- The Vice-chairpersons of the Appeals Tribunal would be appointed by the Lieutenant-Governor in Council as deemed necessary by the Chairperson of the Appeals Tribunal in consultation with the Board of Directors;
- Appeals Panel Members – an equal number of representatives of worker and employer groups throughout the province – would be appointed by the Board of Directors;
- Appeals would be heard by:
  - a hearing panel (oral presentation or paper review) consisting of the Chairperson or Vice-chairperson and two other members of the Appeals Tribunal – equally representing worker and employer groups; or
  - a hearing panel (oral presentation only) consisting of the Chairperson or Vice-chairperson acting alone subject to the consent of all parties and the Chairperson; and
- Two or more panels of the Appeals Tribunal may act simultaneously.

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[2] Information document provided by the Appeals Tribunal, p. 3.

There have been no changes in the legislation since 1994. However, the 2006 Wilson Governance Review produced recommendations including:

- Appointment of Chairperson of the Appeals Tribunal;
- Appointment/Reappointment of Vice-chairpersons of Appeals Tribunal;
- Appointment of Members of Appeals Tribunal; and
- Claims resolutions and appeals process.

The Board of Directors adopted all the recommendations of the 2006 Wilson Governance Review, most of which were incorporated into a draft Memorandum of Understanding in 2007 with the Department of Post-Secondary Education, Training and Labour.

What We Heard...

Similar viewpoints were expressed about many of the issues concerning the appeals system. Some of the suggestions the Panel heard about the appeals process were: there should be an initial level of appeal within the WHSCC; other methods of hearing appeals should be available; and a return to hearing of appeals by the WHSCC Board of Directors.

The Independent Review Panel heard that the timeframes for hearing appeals and rendering decisions are too long and that the 12-month timeframe to request an appeal is too short as is the seven-day appeal period for fines/demerits under the *Occupational Health and Safety Act*.

With respect to resources the Panel heard there should be an increase in resources to reduce wait times and there should be full-time tribunal members.

The Panel heard there should be an increase in the number of workers' advocates; consider other options for cost/funding for advocates; having workers' advocates available at the Workers' Rehabilitation Centre in Grand Bay; and having workers' advocates under the umbrella of the Federation of Labour.

...What We Heard

Regarding Appeals Tribunal decisions and WHSCC policy, the Independent Review Panel heard: appropriate measures should be adopted to ensure Appeals Tribunal decisions are quickly implemented and respected in the adjudication of future claims; WHSCC policy is not properly applied thus increasing the amount of appeals being accepted; it should be mandatory that WHSCC policy be utilized by the Appeals Tribunal in its decision-making process; and a review process should be implemented within WHSCC with authority to make changes before final decision is sent to claimant.

Finally, the Panel heard the Commission should ensure injured workers should receive full loss of earning benefits pending the outcome of their appeal.

New Brunswick Situation

New Brunswick's Appeal Tribunal system is unique in Canada.

New Brunswick's Appeal Tribunal system is unique in Canada. The Appeals Tribunal operates separately from the Commission on a day-to-day basis, yet the administration component is linked to the WHSCC. The decisions made by the Appeals Tribunal are independent from the WHSCC.

The New Brunswick *Workplace Health, Safety and Compensation Commission Act* provides the authority to the Appeals Tribunal to hear an appeal and render a decision under Section 21(3).

In New Brunswick, the Appeals Tribunal is the first and final level of appeal for claims under the *Workers' Compensation Act* and the second level of appeal after the Chief Compliance Officer for claims under the *Occupational Health and Safety Act*. In several jurisdictions there is a legislated second and final level of appeal.

The right to appeal results from the *Workers' Compensation Act* and the *Occupational Health and Safety Act* pursuant to Section 21 (1) of the *Workplace Health, Safety and Compensation Commission Act*.

Composition and Structure of Canadian Appeals Bodies

All Canadian jurisdictions have internal appeals systems working within their Workers' Compensation Board (WCB) as a way for workers and employers to appeal a decision of the Workers' Compensation Board. However, they vary in structure and composition.

New Brunswick is one of two Canadian jurisdictions...does not have an external appeal body...

New Brunswick is one of two Canadian jurisdictions that does not have an external appeal body for workers' compensation issues. Saskatchewan's external appeal body, the Medical Review Panel, is restricted to medical issues. It receives about three appeals per year[3].

Most Canadian jurisdictions have external appeals bodies working independently from their Workers' Compensation Board. These generally quasi-judicial bodies render a final decision on appeals within the framework of the jurisdiction's workers' compensation system. Although New Brunswick's Appeals Tribunal shares many of the attributes of an external body, for the purpose of this Report, the Panel has characterized it as an internal body.

Chairpersons of external appeals bodies are usually appointed by the corresponding Lieutenant Governor except in the Northwest Territories/Nunavut and Québec where they are appointed by the Minister responsible and the Government respectively.

The Chair of the Appeals Tribunal in New Brunswick is appointed by the Lieutenant-Governor in Council, sits as a non-voting member on the Board of Directors, and is subject to evaluation from the WHSCC Board. Only two other jurisdictions are legislated to have the Chair of the appeal review body as part of the Board of Directors' composition - British Columbia and Yukon.

Alberta, Manitoba, Prince Edward Island, and Yukon have members representing workers and employers in their external appeal bodies. Manitoba also has a public representative in its external appeal body.

Discussion of Key Issues

Although the hybrid structure of New Brunswick's Appeals Tribunal (a combination of internal and external appeals systems) is different than other jurisdictions, the Independent Review Panel did not sense a broad desire to alter the overall structure. However, as will be discussed in greater detail later in the Report, the Panel is very concerned about the long delays in the hearing process.

Stakeholders need to have confidence in the impartiality of the Chair of the Appeals Tribunal. Currently there is no formal requirement to

[3] Information obtained from Saskatchewan's WCB.

seek names from the stakeholders. Rather, the Memorandum of Understanding signed in January 2007 between the Workplace Health, Safety and Compensation Commission and the Department of Post-Secondary Education, Training and Labour states "when requested provide the names of potential candidates."

The Lieutenant-Governor in Council appoints the Chair and the Vice-chairs of the Appeals Tribunal, whereas the appointments of the Appeals Tribunal members are by the Board. The Independent Review Panel is satisfied with this appointment process articulated in the MOU as the Board of Directors speaks on behalf of stakeholders. Furthermore, the Appeals Tribunal is bound by legislation and policy directive of the Board.

The Panel believes it should be the responsibility of the Board of Directors to recommend nominees (more than one) for Appeals Tribunal Chair and Vice-chairs for government to appoint.

The appointment/reappointment of Vice-chairs of the Appeals Tribunal under the MOU states "the Chairperson of the Appeals Tribunal, in consultation with the WHSCC, shall provide the Minister with the number of Vice-chairpersons deemed necessary for the proper functioning of the Board."

The power of appointment carries with it the power of removal. The Panel believes that the Chair of the Appeals Tribunal should not be subject to removal by the Board of Directors. Independence of the Appeals Tribunal is maintained if the Chair of the Appeals Tribunal is appointed by the Lieutenant-Governor in Council. Thus, only the Lieutenant-Governor in Council can remove the Chair, not the Board of Directors.

Under the current legislation, the Chair is appointed by the Lieutenant-Governor in Council for a term of up to five years, whereas the Vice-chairs are appointed for terms as prescribed by the Lieutenant-Governor in Council. The Independent Review Panel believes the five year term is appropriate for the Chair and suggests that the Vice-chair appointments be for a term of four years. This would provide sufficient time to understand and interpret the legislation, Commission policies, and the decision-making process.

Recommendation #49

The Independent Review Panel recommends a formal process be developed by WHSCC relating to the nomination of the Chairperson of the Appeals Tribunal in consultation with stakeholders.

Recommendation #50

The Independent Review Panel recommends a formal process be developed by WHSCC relating to the nomination of the Vice -

chairs of the Appeals Tribunal in consultation with stakeholders.

Recommendation #51

The Independent Review Panel recommends terms for Appeals Tribunal Vice-chairs and members be extended to four years.

Duties and Powers of Appeals Bodies

Internal Appeals Bodies

Almost one half of the jurisdictions allow their internal appeals bodies to set their own rules and regulations. All internal appeals bodies, except Newfoundland and Labrador and Saskatchewan, have the explicit power to confirm, vary, or reverse a decision from their respective Workers' Compensation Boards.

In most jurisdictions the internal appeals bodies can entertain new evidence at the hearing. Internal appeals bodies' decisions for the most part, are not final or binding. The exceptions are most notably New Brunswick and Saskatchewan where their internal appeals bodies are the final level of appeal. As previously mentioned, in New Brunswick, the Appeals Tribunal is the first and final level of appeal for claims under the *Workers' Compensation Act* and the second level of appeal after the Chief Compliance Officer for claims under the *Occupational Health and Safety Act*.

...Appeals Tribunal is the fist and final level of appeal for claims under the Workers' Compensation Act...

External Appeals Bodies

Most external appeals bodies have the power to examine, inquire into, hear, and determine all matters and questions under the jurisdiction's *Workers' Compensation Act*. In the case of British Columbia, Newfoundland and Labrador, Nova Scotia, and Yukon, the external appeals bodies have some restrictions on the matters they can examine.

All external appeals bodies have the power to set its own rules and regulations. In the case of Ontario and Yukon, their external appeals bodies are restricted on setting their own rules and regulations regarding proceedings.

All external appeals bodies may confirm, vary, or reverse a decision by the corresponding internal appeals body. As well, all external appeals bodies, with the exception of Newfoundland and Labrador and Prince Edward Island, can entertain new evidence during the appeal hearing. In all cases, the external appeals body is the final level of appeal in the jurisdiction's workers' compensation system.

Process of Canada's Appeals Bodies

Most internal and external appeals bodies share similarities in the process to be followed with an appeal. In all jurisdictions, appeals must be made in writing. Generally, the appellants have the right to attend the hearing if they so desire and the attendance of employers to the hearing is not restricted.

With internal appeal bodies, typically the decisions must follow a documentary/paper review only (the worker may be required to undergo a medical exam), and the finding must be in writing to the appellant.

Appeals System under Occupational Health and Safety Legislation

The appeals system under occupational health and safety legislation varies in every jurisdiction.

In New Brunswick, prior to January 1995, the decision of the Chief Compliance Officer could be appealed to a tribunal of the Occupational Health and Safety Commission. Since the merger of the Workers' Compensation Board and the Occupational Health and Safety Commission, the process for appealing to the Chief Compliance Officer remains unchanged.

...may appeal... to the Chief Compliance Officer under the OHS Act.

Under Section 37 of the *Occupational Health and Safety Act*, any client of the WHSCC who is unsatisfied with an order under the *Occupational Health and Safety Act* may appeal within fourteen days to the Chief Compliance Officer. At this point, the order may be confirmed, varied, revoked, or suspended.

The appeal period is seven days for fines and merits under Section 21(1) of the *Occupational Health and Safety Act*.

The process for appealing decisions of the Chief Compliance Officer changed in 1995 with the merger and resulting new legislation. If unsatisfied with the Chief Compliance Officer's decision, a client now submits an application of appeal to the Appeals Tribunal for consideration.

The Panel heard from the Chief Compliance Officer that he receives about six appeals each year under the *Occupational Health and Safety Act*. The time to hear the appeal can vary from one day to two weeks.

Process of New Brunswick's Appeals System

There are a range of decisions that can be appealed by workers, their dependents or employers through the Appeals Tribunal from denial or termination of benefits to a multitude of decisions that could be made during the course of treatment of the injured worker, i.e., number of

physiotherapy sessions, new eye glasses, prosthetics, and so forth. Although the Appeals Tribunal has jurisdiction to review issues appealed under the *Occupational Health and Safety Act*, the focus of this Report will be on issues appealed under the *Workers' Compensation Act*.

Any decision made on or after June 1, 2001 must be appealed within one year of the decision date; there is no time limit for decisions made before June 1, 2001.

The first step of the current appeals process is to review the appeal. The Registrar's office determines whether the appeal application meets the minimum criteria and also whether it is a valid appeal, i.e., there is a WHSCC decision on the issue that is being challenged.

If it is a valid appeal, the issue is then identified and letters are sent to all parties involved in the appeal. At this point, the appeal is put on the list for scheduling.

Once an appeal has been scheduled, the Appeals Tribunal has to provide a 30-day written notice to all parties involved. As well, an Appeal Record, which is a copy of all of the relevant information in the client's file, is prepared and sent to all parties and to the members of the panel hearing the appeal. The Record is sent two to three weeks prior to the hearing.

After the hearing takes place, a decision is usually made and the hearing chairperson is mandated to write the decision, encompassing the reasons the panel members used for the decision.

Once the decision has been written by the hearing chairperson, it is sent to the Appeals Tribunal staff for processing, then sent back to the hearing chairperson for his/her final review and signature.

At this point, it is circulated to the other two panel members for their signatures after which the decision is mailed to all the parties to the appeals, as well as to the WHSCC for implementation.

Hearings are held in various locations of the province with usually three cases reviewed per day.

Appeals Tribunal members (worker and employer representatives), as part of an Appeals Panel, are provided the authority to examine, hear, and determine all matters affecting an employer, a worker, or a dependant that arises in any appeal before the Tribunal. They are appointed by the WHSCC Board of Directors, normally for a term of one to three years.

An appeal is heard by an Appeals Panel made up of one to three members. A Vice-chairperson is assigned to an Appeals Panel by the Chairperson of the Appeals Tribunal or his/her designate and is responsible to chair the Appeals Panel.

There are generally three main stages to a hearing:

- The pre-hearing stage;
- The hearing itself; and
- The decision-making process.

Usually, the process is that the appellant can request an oral hearing before a three-person panel. The three-person panel is made up of a panel Chair (either the Chairperson of the Appeals Tribunal or one of the Vice-chairs), a worker representative, and an employer representative. This is the most common hearing option and requires a 30-day written notice to all parties involved as previously mentioned.

...number of options...to have...appeal process expedited...

There are a number of options for appellants who would like to have their appeal process expedited:

- The appellant can request a One-Chair Panel. A hearing chairperson sitting alone hears these appeals. Section 21(4)(a) of the *Workplace Health, Safety and Compensation Commission Act* permits a One-Chair Panel providing consent is obtained from all of the parties to the appeal as well as from the Chairperson.
- The appellant can request a paper review, always a Three-Person Panel. Once all of the submissions have been received and the file is ready to be scheduled, a paper review can be conducted faster as it can be easily added onto a day where there has been a cancellation. Also, a paper review does not require the presence of the parties to the appeal and their respective representatives.
- Another approach is through the substituted appeals list. Beginning in 2004, a pilot project on substituted appeals was initiated. When an appeal satisfies the criteria (one issue, small to medium-size file that is complete with no additional information coming in, and no indication of witnesses being called to testify at the hearing) and consent is obtained from all of the parties to the appeal, a file will be put on the substituted appeals list.

  The file is added onto a regular hearing day as a fourth appeal. If there are any cancellations with one of the three regularly scheduled files, the substituted appeal is slotted into the vacated spot. If the substituted appeal is not heard on the day when it is tentatively scheduled, it is returned to the list for scheduling. However, as an incentive, the hearing will be scheduled in the following month providing there are hearing days in the area requested.

  This option has been infrequently used as the appeal must meet established criteria before being eligible as a substituted appeal. The Appeals Tribunal must obtain the consent of all parties to the appeal indicating they understand that the appeal is to go on the substituted appeal list. The Appeals Tribunal has found that in most appeals that were identified as suitable,

one or both of the parties would not sign-off. Of the few that obtained consent, only one or two were in fact expedited in 2005.

- Additionally, if an appellant can establish that the normal wait time for an appeal to be heard is causing serious financial hardship, the Appeals Tribunal will consider scheduling the file on a priority basis, i.e., an appellant may be losing their home or utilities will be shut off, and the appeal deals with the provision of benefits.[4]

Summary of Expedited Hearing Options

Year	1-Chair Panel	Paper Review	Substituted Appeals	Financial Difficulty
2002	0	4	n/a	Not tracked
2003	0	5	n/a	Not tracked
2004	0	1	n/a	Not tracked
2005	3	2	n/a	Not tracked
2006	0	1	n/a	Not tracked

Source: Information provided by the Appeals Tribunal

...full oral hearing...in the absence of new evidence to justify a reconsideration.

As previously noted, the New Brunswick's appeal system is both a first and final level of appeal under the *Workers' Compensation Act*. This results in any decision made in the management of a case being subject to a full oral hearing as there is no mechanism for that decision to be reviewed in the absence of new evidence to justify reconsideration.

Discussion of Key Issues

It was unanimous among all who appeared before the Independent Review Panel and also mentioned by the Appeals Tribunal that the system is burdened by a backlog of appeals resulting in a very lengthy process from the time an appeal is filed until a decision is rendered. Although a variety of methods have been used to address this issue, there is currently no means of reviewing the decisions of the WHSCC under the *Workers' Compensation Act* short of filing an appeal, in the absence of sufficient new evidence, which would justify a reconsideration.

The Panel was told that recently the Appeals Tribunal has collaborated with the Commission to provide notification of appeals that have been added to the Appeals Tribunal list for scheduling. What occurs is that when an appeal application is reviewed and the issue(s) identified, a letter confirming the issue(s) is sent to the parties to the appeal, a copy of which is also sent to the office of the Vice-President responsible for compensation matters. The appeals process continues

[4] Information provided by the Appeals Tribunal.

as usual wherein the appeal would be scheduled and heard, unless the appeal is withdrawn or the Commission has reversed its decision in the file. This process is not built into the Appeals Tribunal process and is not in any policy document.

Representation was made to create an initial level of appeal. Upon reflection, the Independent Review Panel is hesitant to incorporate any recommendations that may only add to the delays. The Panel therefore envisages a process that would perhaps decrease the number of appeals that proceed to hearing, provide for better reasoned decision-making, and improve the quality of the Commission's representation, thereby reducing the appeals backlog.

The appeal process the Independent Review Panel envisions is:

- Request the appeal through the Appeals Tribunal and start the process.
- At the same time, the Commission would be notified of the appeal and would be required to do one of three things:
    - Confirm the decision;
    - Reverse the decision; or
    - Vary the decision; and
- Provide a written explanation, properly articulated explaining the decision and identifying relevant policy, to the Appeals Tribunal and the appellant within 30 days of being notified of an appeal.

By having the Commission explain and articulate decisions with reference to particular policies, the Panel is optimistic that those decisions that by a review should be varied or reversed would be taken out of appeals system during this preliminary review. This would save the appellant the aggravation and time unnecessarily spent in the appeals process. By giving the Commission the opportunity to articulate reasons for all its decisions under appeal, it would also obviate the need for WHSCC to play an active role in the process of appeals.

The Independent Review Panel subscribes to the view that the Appeals Tribunal is obliged to adjudicate based upon the application and interpretation of policies of the Commission. Its role is not to create or develop new policy.

Recommendation #52

The Independent Review Panel recommends that upon the filing of an appeal, the Appeals Tribunal would be obliged to notify the Commission of the appeal. The Commission would then be required to review its decision and either confirm, vary, or reverse the decision, with written explanation based on policy. This explanation would be provided to the Appeals Tribunal and the appellant within 30 days of being notified of an appeal.

Efficiency of Appeals Process

Time Limits - Internal Appeals Bodies

Time limits for an internal appeals body to take a case to the first level of appeal from the original Workers' Compensation Board decision vary across all Canadian jurisdictions, from 10 days in Québec to one year in Alberta and New Brunswick as seen in the following table.

The time limits for the internal appeals body to render a decision vary from 30 days in Yukon to 150 days in British Columbia.

Internal Appeals Bodies Time Limits to First Level of Appeal

	Time Limits to Appeal Previous Decision (days)	Time Limits for Panel to make decision (days)
AB	365	N/A
BC	90	150
MB	No Reference in Act	No Reference in Act
NB	365	No Reference in Act
NL	N/A	N/A
NT/NU	No Reference in Act	No Reference in Act
NS	30	60
ON	30 days to six months	No Reference in Act
PE	90	90
QC	10 to 30	No Reference in Act
SK	No Reference in Act	No
YT	N/A	30

Source: AWCBC - 2007

Time Limits - External Appeals Bodies

Time limits for an external appeals body to take a case to the second level of appeal from the decision by the first level of appeal vary from 10 days in Québec to one year in Alberta and New Brunswick (see following table).

The time limits for the external appeals body to render a decision vary from 45 days in Yukon to 180 days in British Columbia. Some of these time limits are legislated.

External Appeals Bodies Time Limits to Second Level of Appeal

	Time Limits to Appeal Previous Decision (# of days)	Time Limits for Panel to make decision (# of days)
AB	365	N/A
BC	30	180
MB	No Reference in Act	60
NB	365	N/A
NL	30	60
NT/ NU	N/A	N/A
NS	30	60
ON	30 days / 6 months	60
PE	30	90
QC	10 to 45	90 to 275
SK	N/A	No reference in Act
YT	No	45

Source: AWCBC 2007

Appeals Process: from receipt to decision

Currently in New Brunswick, the process from appeal identification to mailing is on average, eight months. Presently, the scheduling of appeals is the factor that takes the longest time (four to six months).

...scheduling of appeals is the factor that takes the longest time...

The length of time before an appeal is heard by the Appeals Tribunal increased by three percent in 2006 and is impacted by the continuing rise in the number of appeals. As well, whether or not there are delays in appointments or reappointments of Panel members (Vice-chairs, and worker or employer representatives) significantly impacts the length of time to hear an appeal. There has been improvement in the processing time from date of the hearing to the decision being mailed. This was reduced by 11 percent.

The vast majority of appeals received by the Tribunal arise from decisions made under the *Workers' Compensation Act*. Only one case in 2005 and one case in 2006 arose from a decision made under the *Occupational Health and Safety Act* and they were either withdrawn or denied[5]. The 2006 WHSCC Stakeholder Report notes that 5,960 orders were issued under the *Occupational Health and Safety Act* any of which could be appealed.

The average timing of the process varies according to the jurisdiction. The range is from 60 days in Newfoundland and Labrador to 627 days in Prince Edward Island (see following table).

[5] Information provided by the WHSCC in a meeting with the IRP.

Average timing on external appeals process:
From receipt of appeal to decision

AB	Standard – 172 days; complex – 225 days
BC	270 days in total (legislated: disclosure to decision – 180 days)
MB	186 days
NB+	243 days
NL	60 days – legislated
NT/NU	246 days
NS	180 days
ON	270 days
PE	627 days
QC	216 days (no payment) 351 days (with payment)
SK*	N/A
YT	94 days

+ Despite NB not having an external appeals body, it has been included in this table for comparison purposes only.

* External Body of appeal is the Medical Review Panel. The 2 other levels of appeals are encompassed within the WCB system.

Source: Information gathered by the IRP from each jurisdiction through phone conversations.

Discussion of Key Issues

Representation was made to eliminate the 12-month time frame to request an appeal as it was considered too short. The Independent Review Panel saw no compelling reason to alter this time frame as the legislated time limit to appeal a previous decision ranges from 30 days in British Columbia to one year in Alberta.

During consultations, the Independent Review Panel took note of the concerns about the long delays in having appeals heard and decisions rendered in a timely fashion.

According to the 2006 WHSCC Stakeholder Report, the Appeals Tribunal received 725 appeals in 2006 of which 675 were initiated by workers or their representatives. The Appeals Tribunal has initiated a number of hearing options to deal with the backlog of appeals received such as paper reviews, but with limited success. Increasing the length of terms of Appeals Tribunal members and providing for staggered appointments could expedite the process by allowing for continuity of decision-makers.

One of the major issues the Panel heard during consultations was the length of time to have an appeal heard and then receive the written decision. There is a precedent in New Brunswick for mandatory decisions within specified periods, i.e., under the *Industrial Relations Act* "shall fix the day, not later than twenty-eight days after the day on which the difference was referred to the Minister, on which the hearing

by the arbitrator will commence" and "if possible, issue an oral decision within one day after the conclusion of the hearing, and issue to the parties and file with the Minister written reasons within twenty-one days after the conclusion of the hearing."

The Independent Review Panel is extremely concerned about the level of appeals delay and does not consider it acceptable. Some of the views the Panel heard during the consultations to deal with the delays were: to increase resources, increase the number of Vice-chairs, and there should be full-time tribunal members. The Panel debated this issue and believes that the recommended improvements to the process should result in substantial decreases in appeals hearings.

The exclusive decision-making model of a full oral hearing has been rejected by many cognate administrative tribunals across Canada over the past number of years. Not all appeals require this scope for hearing and alternate decision-making processes may be more appropriate in dealing with certain cases.

A model for decision-making that has been adopted by many administrative tribunals across Canada and in New Brunswick, i.e., Labour and Employment Board, is:

- Determine if matter at issue justifies a full oral hearing; or
- Appropriateness of the issue to be heard by a single hearing officer as opposed to a full tripartite tribunal.

Recommendation #53

The Independent Review Panel recommends the Appeals Tribunal review its processes and timelines and articulate specific benchmarks (service standards) from receipt of appeal, to hearing of an appeal, to a written decision.

Recommendation #54

The Independent Review Panel recommends the development of a process to prescreen appeals, based on the notion that not all appeals require a full oral hearing. The Chair of the Appeals Tribunal would determine whether or not an appeal needs a full oral hearing or a hearing by a single Chair/Vice-chair on the basis of the record.

Statutory Right to Provincial Court of Appeal

"New Brunswick provides for a party directly affected by a decision, order or ruling of the Appeals Tribunal to appeal to the New Brunswick Court of Appeal. Within 30 days of receipt of a decision, order or ruling of the Appeals Tribunal, the party must request a statement of facts on the grounds taken by the Appeals Tribunal in making the decision, order or ruling. Within 30 days of receipt of the information, the party

must file a Notice of Appeal. The Board may also take a question of law or jurisdiction to the New Brunswick Court of Appeal"[6].

As can be seen in the table below, only one case was heard by the New Brunswick Court of Appeal in 2006. The percentage of cases that advance to a jurisdiction's Court of Appeal is minimal. The highest percentages are in Northwest Territories and Nunavut at 10 percent and Yukon at five percent. This is largely due to the small number of appeals received in both external appeals bodies (18 and 27 respectively). Saskatchewan does not have an external appeals body, nor does it have a statutory right of appeal.

...percentage of cases that advance to a jurisdiction's Court of Appeal is minimal.

Appeals that Advance to Provincial Court of Appeal

	# of Appeals received – fiscal year	How many to court of appeal?	Percentage
AB	1,218	-	-
BC	5,835 (05-06)	-	-
MB	250	0 (2006)	0%
NB	725 (2006)	1 (2006)	0.14%
NL	300 / yr avg	8 (2006)	3%
NT/NU	18 (2006)	2 (2006)	10%
NS	1089 (06-07)	18 (06-07)	2%
ON	4,490 (2005)	-	-
PE	23 (2006)	1 (2006)	4%
QC	27,011	61 (05-06)	0.25%
SK	n/a	n/a	n/a
YT	27 (2004)	1 (2006)	5%

- Not calculated.

Source: Information gathered by the IRP from each jurisdiction through phone conversations or WCBs' websites

There are two models with respect to the ability of courts to review decisions of Appeals Tribunals:

1. Decisions of the Appeals Tribunal are stated to be final and binding and review by a Court is restricted; or
2. There is a statutory right to appeal on specialized grounds, i.e., question of law or jurisdiction.

The table on the next page outlines the ability of courts to review decisions of the Appeals Tribunals.

[6] AWCBC 2007 - Appeal to Court

Appeal to Court

AB In Alberta, effective September 1, 2002, the Board or any person who has a direct interest in a decision of the Appeals Commission may appeal the decision to the Court of Queen's Bench on a question of law or jurisdiction. The originating notice of motion must be filed and served on the Appeals Commission and the other parties to the appeal within six months of the decision of the Appeals Commission.

BC In British Columbia a decision of the Appeals Tribunal is final and conclusive and is not open to question or review in any court.

MB The Act has limited the role of the courts in workers compensation matters. It contains a "privative clause" that restricts the court's ability to review WCB decisions. The court will consider an application for judicial review where the WCB has acted outside its authority, acted without authority, or failed to perform its duties.

NB New Brunswick provides for a party directly affected by a decision, order or ruling of the Appeals Tribunal to appeal to the Court of Appeal. Within 30 days of receipt of a decision, order or ruling of the Appeals Tribunal, the party must request a statement of facts on the grounds taken by the Appeals Tribunal in making the decision, order or ruling. Within 30 days of receipt of the information, the party must file a Notice of Appeal. The Board may also take a question of law or jurisdiction to the New Brunswick Court of Appeal.

NL In Newfoundland and Labrador, the Commission may, of its own motion or upon application of a party, state a question of law for the opinion of the Trial Division.

NT/NU In Northwest Territories & Nunavut, a decision of the Appeals Tribunal may not be reviewed or questioned in any court. This is subject to the implicit understanding that judicial review of a decision may be taken where the decision is patently unreasonable, either as a result of the Appeals Tribunal exceeding its jurisdiction or failing to follow the principles of natural justice.

NS Nova Scotia allows for a party to appeal to the Nova Scotia Court of Appeal from any final decision of the Appeals Tribunal upon a question of jurisdiction, or a question of law, with permission of that court. Such permission must be applied for within 30 days of the Appeals Tribunal decision. The Appeals Tribunal, the WCB and all participants of record in the matters being appealed, must be notified in writing that permission to appeal is being applied for at least 4 clear days before the application is heard. If permission to appeal is granted by the court, the Appeals Tribunal, the Board, and any other party to the appeal, must be given notice within 10 days after the permission has been granted. Also, the Appeals Tribunal or the Board may take a question of law to the Nova Scotia Court of Appeal as a stated case.

ON The Ontario Act does not contain provisions which allow questions of fact or law to be reviewed by a court.

PE The P.E.I. Act provides for the Board only to take a question of law or jurisdiction to the Appeal Division of the Supreme Court of P.E.I., for opinion.

QC In Quebec, it is possible to make a request for a judiciary revision before the Superior Court where there is a denial of natural justice or when the Appeal Commission (CLP) has exceeded its jurisdiction or competence in a matter of occupational injuries.

SK The Saskatchewan Act does not contain provisions which allow questions of fact or law to be reviewed by a court.

YT In 1999, amendments were made to the legislation in the Yukon to allow a court to review, upon application by the appeal tribunal or the board, whether a policy established by the board is consistent with the Act.

Source: AWCBC 2007

Discussion of Key Issues

The Independent Review Panel considers it important to have a judicial review process available, particularly given the hybrid structure of the Appeals Tribunal in New Brunswick. However, the process appears to be somewhat cumbersome and should be reviewed.

Recommendation #55

The Independent Review Panel recommends a statutory right of appeal to the Court of Appeal be maintained in the legislation, but that the current procedure for appeal be reviewed.

Resources for Appellants

Workers' and Employers' Advocates

Workers' and employers' advocates function under the Department of Post-Secondary Education, Training and Labour and work independently from the WHSCC and the Appeals Tribunal. However, operating costs, by legislation, are the responsibility of the Commission.

Most jurisdictions have advisors or advocates available for worker and employer appellants (see following table), although Québec uses private sector delivery. These advisors are generally paid for by the workers' compensation system and are offered at no cost to appellants.

Comparison of Workers' and Employers' Advisors

	Employers' Advocates	Workers' Advocates
NS	N/A Exploring New Model - 2	N/A Exploring New Model - 2
NB	3	6
AB	None	Internal Appeals Advisors who assist workers' who disagree with decisions made on their claims.
QC	N/A – private sector delivery.	N/A – private sector delivery.
ON	15	57
MB	30	Don't track this. Workers' advisors can be appointed by the Lieutenant Governor or Minister.
PE	1	1

	Employers' Advocates	Workers' Advocates
NL	Worker Advisors under the NL Federation of Labour - 2.	Employer Advisors operating from the NL Employers' Council -2.
NT/NU	No reference to employer advisors in legislation.	The Act permits the Minister to appoint a Workers' Advisor and one or more Deputy Workers' Advisors - 2.
YT	N/A	The Yukon's Act requires the Minister of Justice to appoint a workers' advocate, who shall then be a member of the public service.
SK	-	5
BC	Employers' advisors can be appointed by the Lieutenant Governor in Council.	Workers' advisors can be appointed by the Lieutenant Governor in Council.

Source: AWCBC and Jurisdictional Telephone Email Survey - November 2007

For Workers

The mandate of the Workers' Advocates in New Brunswick is to help injured workers and their families obtain the benefits they are entitled to receive under the *Workers' Compensation Act*. Services primarily include providing information to clients about relevant legislation and WHSCC policy, interaction with WHSCC staff, as well as representation at Appeals Tribunal hearings with a view to obtain a decision in the worker's favour. When contacted, a workers' advocate can provide advice on whether or not the claimant has a basis for an argument based on experiences of Appeals Tribunal decisions in the past.

The job description for workers' advocates requires them to be knowledgeable about a wide range of legal, medical and other technical resources, certain administrative law principles and to be skilled in written and oral advocacy techniques. Workers' advocates do not administer or apply workers' compensation legislation.

...two thirds of the cases appealed by workers in New Brunswick are assisted by Workers' Advocates.

There are currently six workers' advocates to handle approximately 600 new files per year.[7]

It is estimated that over two thirds of the cases appealed by workers in New Brunswick are assisted by workers' advocates. The remainder of worker appellants access either community based services for assistance such as the Saint John Labour Community Services, retain their own legal counsel, or represent themselves during the process.

Most jurisdictions offer the service of advisors for worker appellants with the notable exception of Québec where there is no government provided resource. For the most part, the frequency of use of workers'

[7] Letter from the Manager of the Office of the Workers' Advocate to the Independent Review Panel, July 9, 2007.

advisors is very high, except Ontario where the use of workers' advisors is 13 percent. New Brunswick has the third highest frequency of use of workers' advocates with 78 percent of cases appealed by injured workers being represented by workers' advocates as noted in the following table.

Frequency of use of Workers' Advisors

AB	BC	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT
-	72%	43.5%	78%	-	58%	51%	13%	-	n/a	n/a	99%

- Not calculated

Source: Information gathered by the IRP from each jurisdiction through phone conversations or WCBs' websites.

For Employers

In New Brunswick, three employers' advocates are responsible for representing employers and their interests before the Appeals Tribunal.

Their duties include: the provision of specialized advice to employers on their rights and obligations under legislation and the Commission's policies; responding to employers' complaints on workers' compensation issues through consultations with the WHSCC representatives; and assisting employers with the resolution of their complaints through the appeals process that includes the preparation and oral presentations of arguments before the Appeals Tribunal.

Employers' advocates may also be required to make presentations to employer groups and associations on various topics related to workers' compensation issues.

It is estimated that less than one third of cases in New Brunswick appealed by employers are assisted by employers' advocates.

Only five Canadian jurisdictions offer the service of employers' advisors for appellants, which include New Brunswick, British Columbia, Newfoundland and Labrador, Ontario, and Prince Edward Island.

...less than one third of cases...appealed by employers are assisted by employers' advocates.

For the most part, the frequency of use of employers' advisors is very low. In New Brunswick it stands at 24 percent (see following table). The four other jurisdictions where this service is offered have indicated that employers usually bring their own legal representation or represent themselves.

Frequency of Use of Employers' Advisors

AB	BC	MB	NB	NL	NT/NU	NS	ON	PE	QC	SK	YT
n/a	50%	n/a	24%	-	n/a	n/a	6%	25%	n/a	n/a	n/a

- Not calculated.

Source: Information gathered by the IRP from each jurisdiction through phone conversations or WCBs' websites.

Discussion of Key Issues

During meetings with the Department of Post-Secondary Education, Training and Labour, the Panel sensed workers' advocates were, in addition to their primary responsibilities, often seen to be a resource person for the Department for WHSCC issues.

The job position confirms that being a resource for the Department for WHSCC issues is not part of the Workers' Advocates mandate, but instead to help injured workers and their families obtain the benefits they are entitled to receive under the *New Brunswick Workers' Compensation Act*.

Workers' advocates can assist the injured worker at no cost, in a number of ways including: determining if there is a problem with a claim that can be resolved through an appeal; helping to prepare an appeal, written or oral; and appearing with the injured worker or their dependent as his or her representative at an appeal hearing.

However, it appears the Workers' Advocates have largely focused on one aspect of their mandate, that being the representative of an injured worker on appeals. The Independent Review Panel believes that becoming involved earlier in the process could have the effect of reducing appeals, i.e., the Workers' Advocate, on behalf of an injured worker, could ask for a review of the decision by the regional manager or assist the injured worker in obtaining the evidence for reconsideration.

The Panel understands that injured workers frequently appear at appeals with new evidence previously undisclosed. This suggests that many injured workers are inadequately informed of their rights to a reconsideration based on new evidence arising, which if so informed would eliminate a practice of going through an unnecessary appeals process.

The Independent Review Panel would therefore encourage the Commission to ensure a process is developed that, when a decision is rendered, information about a worker's right to appeal, as well as a worker's right to a reconsideration, is clearly articulated in a guideline or form.

The Panel recognizes the importance of the role of the Workers' Advocates and would encourage them to fulfill all aspects of their mandate, not just representation of injured workers at appeals. The Panel's recommendations are suggested with the objective of streamlining the appeals process. If accepted, the appeals process should improve, the number of appeals should decrease, and the Workers' Advocates will have the tools to assist them in fulfilling their wider responsibilities. However, adequate resources need to be maintained.

Although advocates have full access to all Commission files and records that relate to any claim they are reviewing, they must access the files at one of the Commission's regional offices. This is time consuming and incurs unnecessary travel costs. Access from secure terminals in their offices would expedite this process.

During the Independent Review Panel's consultations there were some suggestions that advocates, worker and employer, be under the umbrella of respective stakeholder groups. The Panel also heard workers' advocates should be available at the Workers' Rehabilitation Centre.

The Advocates program, workers and employers, provides a public service to workers and employers of New Brunswick whether it is to unionized or non-unionized workplaces. They have offices in various locations around the Province. The Independent Review Panel respects the current reporting structure.

The Panel sees the Workers' Rehabilitation Centre as a place for therapy and medical treatment, not as an advocacy centre, which would be inconsistent with the mission of the Workers' Rehabilitation Centre.

The Independent Review Panel heard a presentation from the Saint John Labour Community Services that appears to have a successful model in the delivery of services to injured workers. The Panel encourages other communities and/or district labour councils to consider offering such programs to assist with appeals and to provide information on benefits available to injured workers.

During its consultations, the Panel did not hear of any issues specific to the Employers' Advocates.

Recommendation #56

The Independent Review Panel recommends that the Workers' Advocates mandate and job description be revisited in light of the Panel's recommendations.

Recommendation #57

The Independent Review Panel recommends that Workers' and Employers' Advocates have electronic access to WHSCC files from secure terminals, not only terminals located in WHSCC regional offices.

Costs

Expenditures for New Brunswick's Appeals Tribunal have risen slightly since 2002, as shown in the following table.

In 2006, the actual expenditure was $1,242,000 (0.64 percent) of the Commission's total expenditures of $193,457,000. However, Appeals Tribunal expenses as a percentage of total administration expenses has been relatively consistent since 2002.

Expenditures of New Brunswick's Appeals Tribunal

	2006	2005	2004	2003	2002
AT Expenses (000s)	1,242	1,236	1,212	1,039	1,116
Total Administration Expenses (000s)	33,593	32,184	30,964	30,300	29,158
% of Total Administration Expenses	3.70	3.84	3.91	3.43	3.83

Source: 2006 WHSCC Annual Report, p. 84.

The Commission is required by legislation to reimburse the provincial government for operating costs of workers' and employers' advocates. In 2006, the Commission incurred $714,000 for these costs and in 2005 these were $691,000.

Operating and Administration Costs of External Appeals Bodies

Overall costs of external appeals bodies and administration costs per decided appeal depend on a number of factors, namely the number of panel members in the appeals body, the number of cases received in a particular year and the cost of the services provided to appellants.

Overall costs and administration costs of external appeals bodies for 2006 are shown in the table below and range from $170,000 in Yukon to $18.4 million in Ontario. In New Brunswick, the Appeals Tribunal cost was $1.242 million. Information was not available for most jurisdictions as to administration costs per decided appeal. Newfoundland and Labrador had the lowest cost at $500 with Manitoba at $5,100 and New Brunswick at $2,226 per decided appeal.

Costs of External Appeals Bodies

	Overall Costs of External Appeals Body ($ millions)	Administration Costs per decided appeal ($)
AB	8.0	-
BC	16.7	-
MB	1.05	5,100
NB	1.2	2,226

	Overall Costs of External Appeals Body ($ millions)	Administration Costs per decided appeal ($)
NL	0.9	500
NT/NU	0.2	-
NS	1.5	-
ON	18.4	-
PE	-	-
QC	53	1,930
SK	N/A	N/A
YT	0.17	-

Source: Information gathered by the IRP from each jurisdiction through phone conversations or annual reports.

Discussion of Key Issues

During the consultation process the Independent Review Panel was informed that it had been a number of years since remuneration for Appeals Tribunal members had been reviewed. Currently, an Appeals Tribunal Vice-chair in New Brunswick is paid a per diem rate of $238.50 with Appeals Tribunal members receiving $200 per day.

In order to obtain quality candidates, it is important that the per diems be competitive and should be reviewed on a regular basis.

Recommendation #58

The Independent Review Panel recommends remuneration of the Appeals Tribunal positions be regularly reviewed to ensure per diem rates are competitive.

Mandate Question Overview

The Independent Review Panel was asked to assess how well the New Brunswick workplace health, safety and compensation appeals system compares in terms of processes, cost, and efficiency.

New Brunswick's Appeals Tribunal is a unique hybrid model. The Independent Review Panel considers the current structure appropriate and believes it important to maintain the independence of the Appeals Tribunal and members. It is the process of appeals which needs to be changed.

There currently is no preliminary review mechanism for decisions under the *Workers' Compensation Act*. The Panel believes this has contributed to what it sees as a considerable backlog in the number of appeals to be heard, resulting in

unacceptable time delays and the Panel's consequent recommendation for a preliminary review process.

The thrust of the Independent Review Panel's recommendations is to create mechanisms intended to decrease the number of appeals and streamline the appeals processes both for the appellants and advocates.

The Panel is satisfied that the recommendations to modify the appeals processes, establish a new review mechanism, and enhance involvement of the Workers' Advocates at an earlier stage, will assist with establishing a more efficient and timely appeals process.

As previously outlined, overall costs of external appeals bodies and administration costs per decided appeal depend on a number of factors. This, taken with the hybrid structure of New Brunswick's appeal system makes it difficult to determine how well we compare cost-wise to other Canadian jurisdictions.

Financial Performance

How well does the New Brunswick Workplace Health, Safety and Compensation Commission compare to other Canadian jurisdictions in terms of financial performance, including the degree of security for benefits offered; stability of assessment rates, and governance of the financial management?

Financial Performance

This section discusses the financial performance of New Brunswick's Workplace Health, Safety and Compensation Commission, the mandate question of the Independent Review Panel's Terms of Reference - How well does the New Brunswick Workplace Health, Safety and Compensation Commission compare to other Canadian jurisdictions in terms of financial performance, including the degree of security for benefits offered; stability of assessment rates, and governance of the financial management?

Background

...total cost of the compensation system is shared by all employers.

The original Meredith Principles, still accepted by Workers' Compensation Boards across Canada, include:

- **Collective liability:** The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
- **Security of payment:** A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.[1]

The Workplace Health, Safety and Compensation Commission of New Brunswick administers no-fault workplace accident and disability insurance, as well as comprehensive accident prevention, health and safety initiatives for employers and their workers. It is funded primarily through employer assessments, payment through self-insured employers, investment income, and approximately $900,000 per year from the provincial government generally used to support occupational health and safety activities.

Employers are charged a certain dollar amount per $100 of payroll known as the "assessment rate". In New Brunswick all employers other than self-insured, pay into workers' compensation except those noted in the *Exclusion of Workers Regulation - Workers' Compensation Act*.

Expenses of the Commission fall within several main categories including medical aid, vocational rehabilitation, loss of earnings and other financial benefits to injured workers, and prevention and enforcement activities.

[1] http://www.awcbc.org/en/historyofworkerscompensation.asp

The Commission is required by legislation to recognize and account for all future liabilities associated with claims and has created the Accident Fund to satisfy future obligations. The assets are invested with investment income an important component of WHSCC's annual revenue.

What We Heard...

During the Independent Review Panel's mandate, it heard various viewpoints related to funding and investment policies and assessment rates. The Panel heard that surpluses above the 110 percent should be returned to employers through lower assessment rates; that investment income be used to cover future unfunded liability and not be used for operating expenses; and that the funding target should not be increased.

The Independent Review Panel heard that assessment rates should be subject to employers' safety performance and investments in health and safety initiatives and also rehabilitation and return to work initiatives; the portion of the assessment rate set aside for unfunded liability be eliminated; and that rates should be different for non-profit organizations.

The Panel also heard that 50 percent of the annual operating surpluses should be allocated to further benefit improvements for injured workers.

During the consultation process, the Independent Review Panel heard that statutory provisions should be included in the *Act* requiring the Commission to operate in a financially responsible manner and to meet disciplined financial targets over a five-year planning period. It was also suggested that a more aggressive approach to investment management be taken.

...What We Heard

Other recommendations heard included: develop a plan to control administration costs in the future; authorize the Auditor General to audit WHSCC and undertake an evaluation to determine the cause of recent increase in lost-time claims for self-insured employers and to ensure these employers are paying the true cost of insurance.

Finally, the Independent Review Panel heard that WHSCC should strive to regain the perception as having one of the most effective, competitive compensation systems in Canada, i.e., return to the objective of holding assessment rates among the lowest three jurisdictions in Canada.

Financial Overview

The 2006 WHSCC Annual Report noted:

> The Commission recorded a surplus of $82.1 million in 2006. This compares with a $30.2 million surplus in 2005. The surplus is the result of better than expected investment returns and lower than expected claims costs. Actual investment returns were 13.3% compared to budgeted returns of 7.12%. Actual claims costs were $159.9 million, which is 11% lower than the budgeted claims costs of $179.6 million. These operating results pushed the funded position to $102.5 million or 111.0%.[2]

The following tables reflect the five-year (2002-2006) historical financial statements of operations and fund balance, as well as the balance sheet.

[2] 2006 WHSCC Annual Report, p. 43.

Five Year Historical Financial Statements

Statement of Operations and Fund Balance
For the year ended December 31, 2006

	2006 (000s)	2005 (000s)	2004 (000s)	2003 (000s)	2002 (000s)
INCOME					
Assessments	**$ 144,858**	$ 144,672	$ 142,828	$ 124,073	$ 109,228
Self-insured employers	**27,970**	31,284	27,934	27,993	33,471
Investments	**101,859**	64,597	54,839	24,172	17,889
Province of New Brunswick	**900**	900	900	900	900
	275,587	241,453	226,501	177,138	161,488
EXPENSES					
Claims costs incurred					
Short-term disability and rehabilitation	**44,519**	46,276	42,068	40,035	38,902
Long-term disability	**45,435**	72,094	72,600	71,569	74,884
Survivor benefits	**8,963**	7,178	6,395	6,020	8,641
Health care	**60,947**	53,550	49,044	47,702	44,996
	159,864	179,098	170,107	165,326	167,423
Administration	**31,197**	29,912	28,539	28,114	26,909
Appeals Tribunal	**1,242**	1,236	1,212	1,039	1,116
Legislative obligations	**1,154**	1,036	913	990	862
Risk management rebates	**-**	-	300	157	271
	33,593	32,184	30,964	30,300	29,158
Total expenses	**193,457**	211,282	201,071	195,626	196,581
Excess of income over (expenses) for the year	**82,130**	30,171	25,430	(18,488)	(35,093)
Fund balance, beginning of the year	**20,343**	(9,828)	(60,154)	(41,666)	(6,573)
Change in accounting policies	**-**	-	24,896	-	-
Fund balance, end of year	**$ 102,473**	$ 20,343	$ (9,828)	$ (60,154)	$ (41,666)

Source: 2006 WHSCC Annual Report, p. 56

Five Year Historical Financial Statements

Balance Sheet
As at December 31, 2006

	2006 (000s)	2005 (000s)	2004 (000s)	2003 (000s)	2002 (000s)
ASSETS					
Cash and short-term investments	**$ 24,282**	$ 21,784	$ 21,255	$ 14,818	$ 12,644
Receivables	**10,193**	11,944	11,412	10,210	8,590
Recoverable benefits liabilities	**117,791**	115,649	107,803	102,334	96,512
Investments	**873,921**	762,245	683,205	589,388	567,177
Capital assets	**8,665**	8,086	8,084	8,351	8,745
Other assets	**851**	513	497	786	455
	$ 1,035,703	$920,221	$832,256	$725,887	$694,123
LIABILITIES AND FUND BALANCE					
Payables and accruals	**$ 12,257**	$ 11,618	$ 10,643	$ 9,401	$ 9,222
Benefits liabilities	**920,973**	888,260	831,441	776,640	726,567
Total liabilities	**933,230**	899,878	842,084	786,041	735,789
Fund balance	**102,473**	20,343	(9,828)	(60,154)	(41,666)
	$ 1,035,703	$920,221	$832,256	$725,887	$694,123

Source: 2006 WHSCC Annual Report, pp. 54/82

New Brunswick's operating position has fluctuated over the five-year period 2002 to 2006, but has shown a steady increase in its operating balance with surpluses for 2004 to 2006 as seen in the following table. New Brunswick has performed better during this five-year period than all other jurisdictions except for Alberta and British Columbia.

Operating Surplus (Deficit) – Canadian Jurisdictions (000s)

	2002	2003	2004	2005	2006
AB	(59,434)	153,709	252,440	585,625	749,407
BC	(570,876)	154,575	279,859	474,086	986,352
MB	18	(19,213)	9,658	23,030	6,154
NB	(35,093)	(18,488)	25,430	30,171	82,130
NL	1,028	9,487	22,369	31,512	16,628
NT/NU	Unavailable		14,099	25,896	18,066
NS	4,263	(61,652)	2,446	25,641	(10,170)
ON	(934,000)	(544,000)	(843,000)	(494,000)	(142,000)
PE	4,273	3,433	14,421	12,445	12,940
QC	Unavailable	995	683	640	3,739
SK	(93,470)	(7,872)	11,720	16,966	18,888
YT	(24,479)	(1,100)	(6,816)	(7,436)	3,035

Source: Annual Reports 2003-2006

Funding the System

...two principle revenue streams...assessed employers and investment income..

In New Brunswick, the Commission has two principle revenue streams, monies collected from assessed employers and investment income. Additional revenue comes from self-insured employers and a grant from the government.

In 2005, assessments were 59.92 percent of revenue with investments contributing a significant percentage of the revenue stream - 26.75 percent. In 2006, assessment revenue accounted for 52.56 percent of the Commission's revenues with investment income increasing to 36.96 percent.

As can be seen in the following table, assessment revenue for assessable employers over the five-year period 2001-2005 increased in all jurisdictions from 14.3 percent in Newfoundland and Labrador to 128.9 percent in Northwest Territories. In New Brunswick, collectively, employers were paying $54.9 million more in 2005 than they were in 2001 or 61.1 percent more.

Assessment Revenue for Assessable employers ($millions)

	2001	2002	2003	2004	2005	% change
AB	$ 499.9	$ 669.0	$ 869.8	$ 927.4	$ 970.0	94.0 %
BC	$ 835.4	$ 950.3	$ 1,025.0	$ 1,116.4	$ 1,191.0	42.6 %
MB	$ 126.0	$ 129.1	$ 144.9	$ 159.7	$ 167.2	32.7 %
NB	$ 89.8	$ 109.2	$ 124.1	$ 142.8	$ 144.7	61.1 %
NL	$ 130.8	$ 148.8	$ 146.7	$ 158.9	$ 149.5	14.3 %
NS	$ 157.5	$ 171.2	$ 184.5	$ 191.1	$ 201.5	27.9 %
NT/NU	$ 14.9	$ 18.7	$ 21.6	$ 28.6	$ 34.1	128.9 %
ON	$ 2,447.0	$ 2,643.0	$ 2,656.0	$ 2,861.0	$ 2,896.0	18.4 %
PE	$ 21.4	$ 22.8	$ 24.6	$ 25.7	$ 25.9	21.0 %
QC	$ 1,611.1	$ 1,582.4	$ 1,789.8	$ 2,086.8	$ 2,276.0	41.3 %
SK	$ 146.3	$ 155.1	$ 178.5	$ 221.8	$ 212.9	45.5 %
YT	$ 6.8	$ 7.1	$ 7.9	$ 9.5	$ 11.7	72.1 %
CA	**$ 6,086.9**	**$ 6,606.7**	**$ 7,173.4**	**$ 7,929.7**	**$ 8,280.4**	**36.0 %**

Source: AWCBC Key Statistical Measures 2001-2005.

Self-Insured Employers

...self-insured employers... responsible for all direct costs of their claims...

All jurisdictions have self-insured employers (individually liable) and are typically federal and provincial government institutions. These employers do not pay assessment rates, but rather are responsible for all direct costs of their claims and they pay a share of the administration costs associated with managing their claims.

In New Brunswick self-insured employers are:

> Government of Canada, Government of New Brunswick (including Education), Hospital Corporations, Marine Atlantic Inc., Via Québec/Atlantic, and Canadian National Railway.[3]

Alberta, Québec, Saskatchewan, and the Territories do not provide coverage to their provincial/territorial governments. However, they do extend self-insured coverage to the federal government.

Total premium revenue (assessment revenue received and accrued from rate assessed employers and self-insured employers) has increased significantly in most jurisdictions from 2001 to 2005 as seen in the following table.

[3] Association of Workers' Compensation Boards of Canada (AWCBC) - March 2007

Total Premium Revenue ($millions) – Assessed and Self-insured

	2001	2002	2003	2004	2005	% change
AB	$ 508.6	$ 680.4	$ 877.6	$ 936.2	$ 978.9	92.5
BC	$ 916.4	$ 1,019.3	$ 1,077.0	$ 1,175.2	$ 1,240.0	35.3
MB	$ 143.1	$ 146.0	$ 162.6	$ 177.9	$ 190.8	33.3
NB	$ 122.5	$ 142.7	$ 152.1	$ 170.8	$ 176.0	43.7
NL	$ 137.4	$ 155.8	$ 155.2	$ 167.0	$ 158.2	15.1
NS	$ 189.9	$ 201.5	$ 216.1	$ 223.7	$ 239.8	26.3
NT/NU	$ 15.3	$ 19.2	$ 21.6	$ 29.4	$ 35.0	128.8
ON	$ 2,726.0	$ 2,899.0	$ 2,929.0	$ 3,141.0	$ 3,190.0	17.0
PE	$ 23.9	$ 24.9	$ 26.7	$ 28.4	$ 28.6	19.7
QC	unavailable					
SK	$ 148.4	$ 157.2	$ 181.3	$ 224.3	$ 215.5	45.2
YT	$ 7.2	$ 7.7	$ 8.4	$ 9.7	$ 11.9	65.3

Source: AWCBC Key Statistical Measure 2001-2005

Expenditures

In New Brunswick, the Commission's expenditures from the Accident Fund generally go to pay for:

- Medical aid;
- Vocational rehabilitation;
- Loss of earnings and other financial benefits to injured workers;
- Administration of the WHSCC;
- Prevention and enforcement activities;
- Workers' and employers' advocates;
- Research; and
- Other activities undertaken by the WHSCC.

There are many challenges to cost management. In a presentation by Morneau Sobeco to the Association of Workers' Compensation Boards of Canada during their 2006 Annual Congress, a number of these potential, as well as unusual challenges were identified:

- Aging population – shortages in cumulative trauma and more long-term claims;
- Occupational stress;
- Occupational cancers;
- Temporary foreign workers;
- Disasters/Catastrophes;
- Pandemic; and
- Major projects in small jurisdictions.[4]

[4] http://www.awcbc.org/english/board_pdfs/Congress2006_Ferguson.pdf - Morneau Sobeco: AWCBC 2006 Annual Congress Paying for our Compensation System in the Future, June 27, 2006.

Claims Costs

In 2006, approximately 82.6 percent of the Commission's expenditures were related to claims costs including:

- Short-term disability and rehabilitation;
- Long-term disability;
- Survivor benefits; and
- Health care.[5]

The total claims costs in 2006 amounted to approximately $160 million, almost $20 million less than the previous year and $9 million less than the five-year average (2002-2006) of approximately $168 million.

Despite the trend of declining injury frequency, average benefit costs per lost-time claims have shown significant increases over the past five years in most jurisdictions. Current year average benefit costs per lost-time claim (assessable employers only) ranged from a 24.6 percent decrease in Northwest Territories to a 79.5 percent increase in Prince Edward Island from 2001 to 2005. New Brunswick's current year average benefit costs per lost-time claims increased by 39.3 percent over the same five-year period, almost 15 percent above the Canadian average percentage change of 24.9 (see following table).

Current Year Average Benefit Cost per Lost-Time Claim

	2001	2002	2003	2004	2005	% change
AB	$ 13,678	$ 14,645	$ 15,729	$ 16,361	$ 16,875	23.4
BC	$ 13,021	$ 12,626	$ 12,132	$ 12,664	$ 12,740	-2.2
MB	$ 5,568	$ 5,693	$ 5,518	$ 6,288	$ 7,678	37.9
NB	$ 19,546	$ 20,648	$ 22,350	$ 25,225	$ 27,235	39.3
NL	$ 16,838	$ 17,074	$ 18,753	$ 18,076	$ 18,132	7.7
NS	$ 11,000	$ 11,815	$ 12,177	$ 12,762	$ 14,242	29.5
NT/NU	$ 29,885	$ 26,190	$ 22,537	$ 25,458	$ 22,534	-24.6
ON	$ 11,474	$ 12,255	$ 14,334	$ 14,797	$ 16,088	40.2
PE	$ 7,845	$ 8,483	$ 9,961	$ 11,455	$ 14,080	79.5
QC	$ 10,503	$ 11,317	$ 12,221	$ 13,266	$ 14,127	34.5
SK	$ 8,770	$ 9,264	$ 8,833	$ 9,938	$ 9,668	10.2
YT	$ 22,557	$ 22,539	$ 21,950	$ 25,051	$ 26,593	17.9
CA	**$ 11,508**	**$ 12,030**	**$ 12,879**	**$ 13,610**	**$ 14,374**	**24.9**

Source: AWCBC Indicator Ratios 2001 - 2005

In order to provide the best benefits and achieve the lowest possible assessment rates, claims costs are required to be competitive. The cost of new claims benefits for New Brunswick in 2005 (for accidents that occurred and diseases that were reported/diagnosed in the same

[5] 2006 WHSCC Annual Report, p. 56.

year) was $1.48 for $100 of assessable payroll, an increase of 2.8 percent over five years. This ranged from $0.87 per $100 of assessable payroll in Ontario to $1.82 in Newfoundland and Labrador with the average for Canada being $1.15.

As noted in the following table, the trend across Canada for current year benefit costs over the past five-year period 2001 to 2005 varies from a decrease of 40.1 percent in Northwest Territories to a 10.7 percent increase in Manitoba. The Canadian average percentage change showed a decrease of 7.3 percent.

Current Year Benefit Costs per $100 of Assessable Payroll

	2001	2002	2003	2004	2005	% change
AB	$ 1.38	$ 1.35	$ 1.31	$ 1.21	$ 1.12	-18.8
BC	$ 1.62	$ 1.40	$ 1.26	$ 1.28	$ 1.26	-22.2
MB	$ 1.12	$ 1.08	$ 0.98	$ 1.03	$ 1.24	10.7
NB	$ 1.44	$ 1.34	$ 1.34	$ 1.29	$ 1.48	2.8
NL	$ 2.55	$ 2.22	$ 2.18	$ 1.85	$ 1.82	-28.6
NS	$ 1.42	$ 1.42	$ 1.41	$ 1.47	$ 1.56	9.9
NT/NU	$ 2.02	$ 1.67	$ 1.40	$ 1.28	$ 1.21	-40.1
ON	$ 0.84	$ 0.83	$ 0.89	$ 0.86	$ 0.87	3.6
PE	$ 1.37	$ 1.18	$ 1.10	$ 1.02	$ 1.02	-25.6
QC	$ 1.38	$ 1.39	$ 1.40	$ 1.42	$ 1.39	0.7
SK	$ 1.39	$ 1.46	$ 1.28	$ 1.26	$ 1.19	-14.4
YT	$ 1.92	$ 2.04	$ 1.70	$ 1.83	$ 1.81	-5.7
CA	**$ 1.24**	**$ 1.19**	**$ 1.18**	**$ 1.16**	**$ 1.15**	**-7.3**

Source: AWCBC Indicator Ratios 2001 - 2005

With the exception of two jurisdictions, Alberta and Prince Edward Island, benefit payments for assessable employers increased over the period 2001 to 2005 as indicated in the following table. These are the total benefit payments made, for current and prior accident years, for all benefit type, i.e., short-term disability, long-term disability, survivors' benefits, and health care and rehabilitation services. The increase in costs ranged from 0.2 percent in British Columbia to 68.9 percent in Nova Scotia. New Brunswick's benefit costs for assessable employers increased by 4.5 percent over the same period, whereas the average percentage change for Canada was 11.7 percent.

Benefit Payments for All Years Paid During the Year for Assessable employers.

Excludes administration costs ($000's)

	2001	2002	2003	2004	2005	% change
AB	$ 570,839	$ 755,647	$ 567,696	$ 543,031	$ 529,671	-7.2
BC	$ 890,594	$ 848,083	$ 842,345	$ 865,501	$ 891,959	0.2
MB	$ 124,739	$ 120,763	$ 126,829	$ 130,322	$ 133,453	7.0
NB	$ 97,987	$ 92,443	$ 97,254	$ 96,238	$ 102,427	4.5
NL	$ 104,935	$ 101,403	$ 110,169	$ 104,972	$ 108,232	3.1
NS	$ 112,645	$ 116,075	$ 126,108	$ 138,805	$ 190,209	68.9
NT/NU	$ 17,767	$ 20,328	$ 20,621	$ 18,745	$ 18,165	2.2
ON	$2,279,000	$2,382,000	$2,447,000	$2,577,769	$2,666,852	17.0
PE	$ 15,474	$ 13,431	$ 13,532	$ 13,194	$ 13,793	-10.9
QC	$1,347,298	$1,427,091	$1,519,830	$1,557,783	$1,571,995	16.7
SK	$ 161,302	$ 172,992	$ 166,883	$ 167,091	$ 162,244	0.6
YT	$ 10,829	$ 12,617	$ 12,716	$ 12,423	$ 12,851	18.7
CA	**$5,733,409**	**$6,062,873**	**$6,080,983**	**$6,225,874**	**$6,401,851**	**11.7**

Source: AWCC Key Statistical Measures 2001 - 2005

The trend for increasing benefits costs was also seen by self-insured employers as noted in the following table. Benefit costs ranged from a 17.2 percent decrease in Prince Edward Island to a 24.2 percent increase in Northwest Territories. New Brunswick's benefit costs for self-insured employers increased by 11.4 percent.

In many jurisdictions, the increase in benefit costs was greater for self-insured employers (see following table) than for the assessed employers, almost seven percent higher in New Brunswick.

Benefit Payments for All Years Paid During the Year for Self-Insured employers.

Excludes administration costs ($000's)

	2001	2002	2003	2004	2005	% change
AB	$ 7,646	$ 10,159	$ 6,498	$ 7,305	$ 7,462	-2.4
BC	$ 41,760	$ 42,525	$ 40,348	$ 42,187	$ 40,120	-3.9
MB	$ 16,943	$ 16,313	$ 16,546	$ 17,671	$ 19,146	13.0
NB	$ 17,816	$ 18,654	$ 17,999	$ 19,068	$ 19,852	11.4
NL	$ 5,725	$ 5,993	$ 6,883	$ 6,708	$ 6,940	21.2
NS	$ 27,873	$ 25,998	$ 27,027	$ 27,827	$ 33,354	19.7
NT/NU	$ 629	$ 708	$ 268	$ 570	$ 781	24.2
ON	$ 229,000	$ 217,000	$ 228,000	$ 235,781	$ 242,939	6.1
PE	$ 2,533	$ 2,118	$ 2,147	$ 2,291	$ 2,098	-17.2
QC	unavailable					
SK	$ 2,096	$ 2,183	$ 2,751	$ 2,533	$ 2,557	22.0
YT	unavailable					

Source: AWCBC Key Statistical Measures 2001 - 2005

Health Care Expenditures

In 2006, approximately one-third (31.5 percent) of the Commission's expenditures were related to health care despite declining injury frequencies. The workplace health, safety and compensation system relies on the provincial health care system for access to services such as diagnostic testing, examinations by doctors/specialists, and access to surgical interventions.

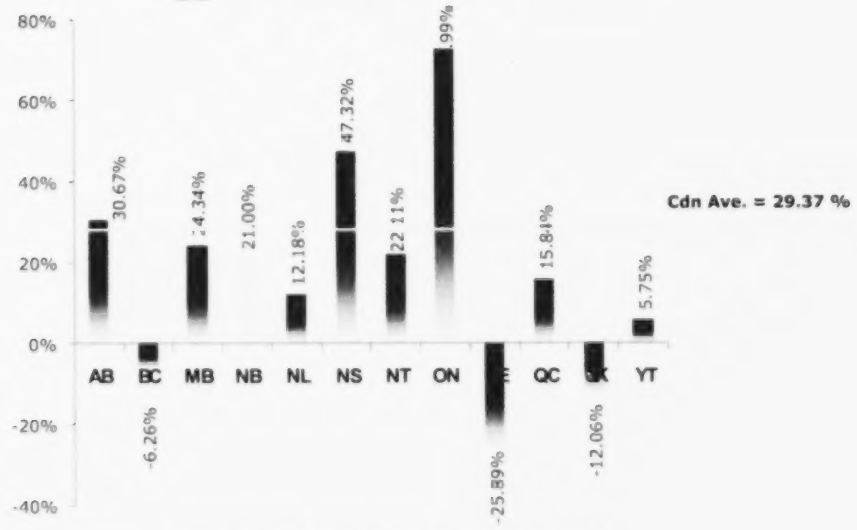
The Commission has established policies on medical aid principles, standards of care, and evidence of medical effectiveness. In addition, the Commission has developed several initiatives to increase access to health care and reduce costs. The Commission's payments for prescription drugs have more than doubled in the last 10 years, "rising from less than $1 million in 1997 to over $3.7 million in 2006."[6] Guidelines for managing the use of narcotics were completed in October 2007.

Health care and vocational rehabilitation benefit payments represent an increasing cost for most jurisdictions.

Health care and vocational rehabilitation benefit payments represent an increasing cost for most jurisdictions. From 2001 to 2005, total benefit payments made for current and prior accident years for health care and vocational rehabilitation services for assessable employers ranged from a 25.89 percent decrease in Prince Edward Island to a 72.99 percent increase in Ontario as depicted in the following graph.

From 2004 to 2005, New Brunswick's health care and vocational rehabilitation benefits payments increased at a rapid rate – $28.812 million in 2004 to $36.692 million in 2005 or 27.4 percent. However, over the five-year period 2001 to 2005 the total increase was 21 percent, more than eight percentage points below the Canadian average increase.

Percentage Change from 2001 to 2005



Source: AWCBC Key Statistical Measures 2001-2005

[6] WHSCC Corporate Indicators - Rehabilitation Volume 3: It is important to note that this number does not include prescription drugs administered to injured workers while in a hospital facility.

Injury frequencies between 2001 and 2005 have been declining across Canada from -6.5 percent in Nova Scotia to -57.6 percent in Prince Edward Island per 100 workers of assessable employers as seen in the following table. New Brunswick has seen a decline of 21.1 percent, better than the national average percentage change of -17.9 percent.

Injury Frequency per 100 workers of assessable employers

	2001	2002	2003	2004	2005	% change
AB	3.04	2.79	2.61	2.46	2.23	-26.7
BC	3.58	3.24	3.06	3.06	3.09	-13.7
MB	5.29	5.3	5.05	4.83	4.75	-10.2
NB	1.8	1.59	1.47	1.3	1.42	-21.1
NL	3.44	2.94	2.7	2.54	2.52	-26.7
NS	3.24	3.11	3.04	3.13	3.03	-6.5
NT/NU	3.4	3.1	2.77	2.33	2.74	-19.4
ON	2.37	2.26	1.98	1.88	1.9	-20.5
PE	3.34	2.66	2.05	1.79	1.42	-57.5
QC	3.48	3.32	3.16	3.04	2.88	-17.2
SK	4.37	5.01	4.24	3.79	3.95	-9.6
YT	2.65	2.98	2.54	2.46	2.33	-12.1
CA	**3.13**	**2.96**	**2.72**	**2.61**	**2.57**	**-17.9**

Source: AWCBC Key Statistical Measures 2001 - 2005

Occupational Diseases

Occupational diseases continue to be a significant issue for all Workers' Compensation Boards in Canada.

...occupational diseases represented approximately one half of the total of workplace-related fatalities...

It was estimated that occupational diseases represented approximately one half of the total of workplace-related fatalities that occurred in Canada in 2005. Recognizing and preventing work-related diseases continues to be a challenge because of:

- The complexities involved in linking work and health issues;
- A limited understanding of exposure-effect relationships;
- Long latency periods; and
- Limited disease reporting and data collection.

In New Brunswick, occupational diseases represent $1 to $4 million of annual claims costs of $98 to $114 million. During 2005 to 2006, WHSCC undertook an Occupational Disease Study to examine the future potential for increased occupational disease claims.

> Benefits liabilities amounted to approximately $921 million (M) at the end of 2006. Of this, approximately $830M was for regular benefits liabilities and $37M was in respect of occupational diseases. The $37M occupational disease liability represents 4.5 percent of the regular benefits liabilities of $830M. The remainder

($54M) is for administrative expense liabilities. Currently, occupational diseases represent one to three percent of claims accepted by the Commission.

Although difficult to measure, the actuary estimates that only 1/3 of disease claims that could be filed with the Commission are actually filed. Morneau-Sobeco estimated that the current liability reserve is adequate to cover a short-term increase in that ratio and that this should be monitored in the future.[7]

In the case of a pandemic or widespread infectious disease, estimates suggest the cost impact to the Commission of $8 million to $105 million. This is not reflected in the current liability reserve.

At present, firefighters in New Brunswick including volunteer firefighters are covered under the *Workers' Compensation Act* although not through a presumption clause (occupational cancers). In 2005-2006, Morneau Sobeco had "estimated a cost impact of $37 million in liabilities and $4 million in annual claim costs, which translates to a $0.12 increase in assessment rates for 8 years and $0.06 thereafter".[8]

Bill 12, *An Act to Amend the Workers' Compensation Act* related to firefighter presumption legislation, was proclaimed on December 20, 2007. It includes occupational disease arising out of and in the course of employment and heart injury within twenty-four hours after attendance at an emergency response.

Long-Term Disability (LTD)

...in 2006, a larger portion of claims became long-term disability claims...

In New Brunswick, in 2006, a larger portion of claims became long-term disability claims - 2,455 injured workers were receiving long-term disability, five percent more than in 2005.

Long-term disability expenses have decreased $30 million between 2005 ($72.094 million) and 2006 ($45.435 million). This expense consists of cash payments to long-term disability recipients in the year plus the change in the benefit liability, which is the anticipated benefits that will become payable to claimants injured in the current year. The Commission is unable to predict which of the claimants will become entitled to long-term disability benefits, what the benefits will be, or when they will become entitled. Estimating this portion of the liability is a challenging task in determining the benefit liabilities.

The WHSCC bases its estimates on characteristics of recently approved long-term disability claims and characteristics of lost-time claims that have not yet qualified for long-term disability benefits. At the end of 2005, there was concern that the methodology was producing an estimate that was too high, particularly for the claims that occurred in

[7] WHSCC Occupational Disease Study 2005-2006, pp. 7-8.
[8] Ibid

2005. The 2006 results supported the Commission's concern, resulting in lowering the estimate of the number of claims likely to become entitled to long-term disability benefits. This led to a substantial reduction in the liabilities for claims that occurred prior to 2006 and is reflected in the 2006 financial statements.[9]

...increasing costs of new long-term disability claims as a financial risk.

The Commission identified the increasing costs of new long-term disability claims as a financial risk. A study was commissioned to determine the causes of the increases. Morneau Sobeco performed that study and identified the following cost increase drivers:

- Aging - as the workforce ages, the effect of an injury on an individual increases and the opportunity for re-employment reduces; and
- Policy Driven - the Board of Directors policy changes related to eligibility and calculation of LTD benefits resulted in more long-term disability claimants (no estimated work capacity, full benefits to age 65).

In New Brunswick, when a worker has been receiving long-term disability benefits for 24 months, an amount equal to five percent of benefits plus interest (annuity) is set aside to offset lost Canada Pension Plan. Annuities are discussed in more detail in the Coverage and Benefits section of the Report.

Survivor Benefits

From 1982-1993 the amount set aside for an annuity was eight percent and is currently five percent. In 2006, 482 spouses and dependents were receiving pension benefits, as well as 1,284 pre-1982 accident pensioners. According to financial statements, the cost of survivor benefits has fluctuated over the five-year period 2002 to 2006 and was $8.963 million in 2006.

Administration Expenditures

The administrative costs incurred by the WHSCC per $100 of assessable payroll in 2005 ($0.29) were below the average administrative costs across all jurisdictions ($0.32). Alberta had the lowest cost at $0.22 and Yukon incurred the highest cost at $1.03. However, administrative costs in New Brunswick have remained relatively constant since 2001, whereas the Canada-wide trend has been for a decrease in administration costs per $100 of assessable payroll as can be seen in the following table.

[9] Information provided by WHSCC.

Administrative Costs incurred by the WHSCC per $100 of Assessable Payroll

	2001	2002	2003	2004	2005	% change
AB	$ 0.31	$ 0.29	$ 0.26	$ 0.24	$ 0.22	-29.03%
BC	$ 0.42	$ 0.39	$ 0.37	$ 0.36	$ 0.36	-14.29%
MB	$ 0.43	$ 0.42	$ 0.41	$ 0.39	$ 0.39	-9.30%
NB	$ 0.28	$ 0.28	$ 0.28	$ 0.27	$ 0.29	3.57%
NL	$ 0.48	$ 0.54	$ 0.53	$ 0.52	$ 0.49	2.08%
NS	$ 0.31	$ 0.33	$ 0.31	$ 0.34	$ 0.38	22.58%
NT/NU	$ 0.88	$ 0.86	$ 0.87	$ 0.91	$ 0.82	-6.82%
ON	$ 0.39	$ 0.39	$ 0.36	$ 0.34	$ 0.33	-15.38%
PE	$ 0.43	$ 0.41	$ 0.42	$ 0.41	$ 0.42	-2.33%
QC	$ 0.37	$ 0.35	$ 0.33	$ 0.32	$ 0.29	-21.62%
SK	$ 0.40	$ 0.38	$ 0.33	$ 0.31	$ 0.30	-25.00%
YT	$ 1.05	$ 1.04	$ 1.00	$ 0.82	$ 1.03	-1.90%
CA	**$ 0.38**	**$ 0.37**	**$ 0.35**	**$ 0.33**	**$ 0.32**	**-15.79%**

Source: AWCBC - March 2007- Indicator Ratios for 2001-2005

From the WHSCC Financial Statements, the administrative costs in 2006 ($31.197 million) accounted for 21.5 percent of the Commission's total assessment revenue. In 2002, administrative costs ($26.909 million) accounted for 24.6 percent of assessment revenue.

The Commission is required by legislation to reimburse the provincial government for operating costs of the Workers' and Employers' Advocates. In 2006, the Commission incurred $714,000 for these costs compared to $691,000 in 2005.

Appeals Tribunal Expenditures

Expenditures for New Brunswick's Appeals Tribunal have risen slightly since 2002. In 2006, the actual expenditure was $1,242,000 or 0.64 percent of the Commission's total expenditures of $211,282,000.

	2006	2005	2004	2003	2002
Expenses (000s)	1,242	1,236	1,212	1,039	1,116
% of Total Expenses	0.64	0.59	0.60	0.53	0.57

Source: 2006 WHSCC Annual Report, p. 84.

Overall costs of external appeals bodies and administration costs per decided appeal depend on a number of factors, namely the number of panel members in the appeals body, the number of cases received in a particular year and the cost of the services provided to appellants.

Overall costs and administration costs of external appeals bodies for 2006 are shown in the table below and range from $170,000 in Yukon to $18.4 million in Ontario. The information was not available for most jurisdictions as to administration costs per decided appeal. Newfoundland and Labrador had the lowest cost at $500, Manitoba at $5,100 and New Brunswick at $2,226 per decided appeal.

Costs of External Appeals Bodies (2006)

	Overall Costs of External Appeals Body ($ millions)	Administration Costs per decided appeal ($)
AB	8.0	-
BC	16.7	-
MB	1.05	5,100
NB	1.2	2,226
NL	0.9	500
NT/NU	0.2	-
NS	1.5	-
ON	18.4	-
PE	-	-
QC	53	1,930
SK	N/A	N/A
YT	0.17	-

Despite NB not having an external appeals body, it has been included in this table for comparison purposes

Source: Information gathered by the IRP from each jurisdiction through phone conversations or annual reports.

Recommendations and further discussion on appeals bodies can be found in the section on the Appeals Tribunal.

Degree of Security

A Meredith Principle that is still a fundamental today is:

> Security of payment: A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.[10]

To that end, when a claim is filed with WHSCC, it accounts for a liability of all future costs associated with that claim, whether it be health care, vocational rehabilitation, medical, or long-term disability and as such is recognized as a liability in the Accident Fund.

The Commission has articulated its goal to finding the right balance between low assessment rates and the best possible benefits to injured workers while ensuring that all its fiscal obligations are met, such as wage loss, rehabilitation, long-term disability, and annuities.

[10] http://www.awcbc.org/en/historyofworkerscompensation.asp

To meet the revenue requirements of the Commission's Accident Fund under the *Workers' Compensation Act,* the WHSCC has Policy No. 37-100: Long-Term Fiscal Strategy that describes the funding goal (ratio of assets to liabilities) of 110 percent.

> Liabilities will be recognized, or a reserve established for the future recognition of such liabilities, such that the funded ratio remains 110 percent or above. Annual surpluses will be allocated to the reserve or recognized as liabilities until the actuarially determined liabilities are fully recognized.

This goal was set to provide enhanced security that benefit commitments will be met, to allow for fluctuation in the market value of the assets, and to provide assessment rate stabilization.

The *2007-2012 WHSCC Strategic Plan & Risk Assessment* sets out a number of initiatives to maintain a fully funded liability including:

- Regularly reviewing policies and legislation to determine the most appropriate benefits for injured workers while balancing assessment rates to employers;
- Performing internal audits;
- Dedicating resources to policy governance, investment management, and financial management to ensure the highest standards in governance and administration; and
- Investigating claims for possible fraud and/or abuse.

Accident Fund / Benefits Liabilities

Benefits Liabilities = *Funding Ratio*
Funds in Accident Fund

The ratio between the benefits liabilities and the funds in the Accident Fund is the funding ratio.

When the Commission is in a funded ratio position of less than 100 percent, the *Workers' Compensation Act* requires that it become fully funded within a five-year period to meet all claims for compensation – those incurred in the current year, as well as the estimated cost of those claims for subsequent years, and the administrative costs of the Commission:

> **54** (1.1) Notwithstanding subsection (1), in the event the Commission incurs a deficit in any fiscal year, the Commission shall take such steps as are necessary to assess, levy and collect within five years of the deficit having been incurred, sufficient funds to fund the deficit which was incurred.

According to the Board of Directors' policy on Long-Term Fiscal Strategy, when the funding ratio is greater than 110 percent, the amount exceeding 110 percent will be amortized over a period not greater than eight years. Likewise, when the funding ratio is less than 110 percent, the amount less than 110 percent will be amortized over

a period not greater than eight years. The amortization will take the form of an adjustment to the annual assessment rates, thereby reducing the impact of year-to-year fluctuations in the funding ratio and providing assessment rate stabilization.

As of December 31, 2006 the Accident Fund comprised assets of $1.035 billion - a funded ratio of 111.0 percent.[11] This was not the case for self-insured employers whose total benefit liabilities as of December 31, 2006 were $121,141,779 excluding benefits covered under the *Government Employees Compensation Act* and the *Silicosis Compensation Act*.

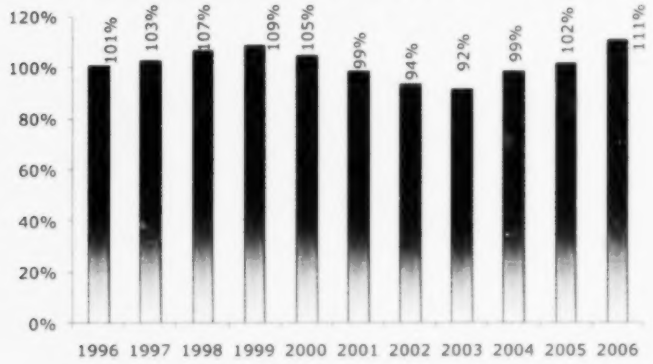
Benefits liabilities in New Brunswick represent the actuarial present value of all future benefits payments expected to be made for claims which occurred in the current fiscal year or in any prior year. Benefits liabilities also include the estimated liability for latent occupational disease and a provision for future administration costs of existing claims.[12]

The total benefits liabilities as at December 31, 2006 for benefit payments of all types expected to be made after December 31, 2006 (including permanent awards and the effect of future indexing, occupational diseases and future administrative costs on existing claims) in respect of accidents of 2006 and prior years amounted to $799,831,651 for assessed employers and $121,141,779 for self-insured employers. As of March 31, 2007 the Government of New Brunswick stated an employee benefit liability for injured workers in the amount of $105.8 million.[13]

Funding and Investment Goals

Over the past 11 years, the funding ratio for the Accident Fund in New Brunswick has fluctuated from 92 to 111 percent as seen in the following graph.

Funding Percentages 1996 – 2006



Source: WHSCC Annual Report 2006

[11] WHSCC 2006 Annual Report
[12] Actuarial Assumptions: 2006 WHSCC Annual Report
[13] Public Accounts, Volume 1: Financial Statements, March 31, 2007, Schedule 7, p. 45.

In 2005, seven jurisdictions were fully funded. Ontario had the greatest unfunded liability at 69 percent and Northwest Territories had the highest percentage funded at 128 percent as shown in the following table. From 2000 to 2003, New Brunswick had declining funding ratios. In 2005, the funding ratio increased to 102.30 percent and further increased to 111 percent in 2006. This represents an increase of 6.11 percent since 2000.

Comparison of funding levels 2000 – 2006 (includes reserves)

	2000	2001	2002	2003	2004	2005	% change
AB	110.21%	105.50%	104.30%	107.60%	123.89%	124.87%	13.30%
BC	105.37%	101.61%	95.20%	97.11%	111.38%	119.43%	13.34%
MB	102.69%	102.70%	110.80%	107.90%	118.10%	125.00%	21.73%
NB	104.61%	99.00%	94.30%	92.30%	98.80%	102.30%	-2.21%
NL	65.20%	67.50%	71.70%	74.10%	85.50%	92.60%	42.02%
NS	68.30%	71.60%	73.20%	67.20%	72.40%	74.90%	9.66%
NT/NU	127.00%	120.00%	114.00%	110.00%	116.00%	128.00%	0.79%
ON	66.80%	67.17%	63.82%	62.41%	68.00%	69.00%	3.29%
PE	68.44%	68.98%	73.59%	78.26%	88.18%	99.74%	45.73%
QC	103.83%	92.60%	91.60%	84.20%	82.40%	92.08%	-11.32%
SK	103.53%	100.00%	92.40%	91.76%	102.41%	110.21%	6.45%
YT	112.00%	112.00%	100.00%	100.00%	100.00%	101.40%	-9.46%
CA	**87.62%**	**84.74%**	**81.60%**	**79.99%**	**86.73%**	**91.21%**	**4.10%**

Source: AWCBC Key Statistical Measures 2000-2005

Funding goals vary across Canada with some jurisdictions wanting to be fully funded by a certain date to other fully funded jurisdictions establishing funding goals at 100 to 130 percent, i.e., British Columbia (see the following table).

Investment goals also varied with most jurisdictions using the Consumer Price Index plus an additional two to six percent. New Brunswick's investment goal in 2006 was CPI plus 3.8 percent on a four year moving average basis.

Funding and Investment Goals

	Funding Goals	Investment portfolio increase (1 yr. - on fair-value basis)	Investment Goals
AB	116- 122%	8.7%	3.25% (actuarial requirement)
BC	100-130%	11.6%	CPI plus 3.5%
MB	Fully funded	12.0%	CPI plus 4%
NB	110%	13.3%	CPI plus 3.8% over four years
NL	Fully funded by 2016	N/A	3.5% (Actuarial requirement)

	Funding Goals	Investment portfolio increase (1 yr. - on fair-value basis)	Investment Goals
NT/NU	108 - 120%		
NS	Fully funded by 2016	14.5%	Consumer Price Index (CPI) of 2% through 2012; 4% from 2013 onwards.
ON	Fully funded by 2014	Insurance Fund 16.2%	Insurance Fund benchmark 15%
PE	Fully funded by 2021 (Goal 100-110%)	8.2%	Real rate of return 3.5%
QC	100%	U/A	U/A
SK	Fully funded by 2012	14.6%	6% real rate of return
YT	Fully funded	U/A	U/A

Source: 2006 Annual Reports / Policy Documents

Stability of Assessment Rates

Workers' Compensation Boards are funded primarily by employers (not by government) who are charged a certain dollar amount per $100 of payroll. This amount is known as the "assessment rate" or "premium". Depending on the legislation in each jurisdiction, not all employers pay into workers' compensation. To determine the amount on which an employer is assessed, a large number of earnings are taken into consideration such as regular salary or wages, commission, bonuses, gratuities, advance of future earnings, overtime, and so forth.

New Brunswick assesses rates...by industry or class assessment... experience rating.

There are varying processes and methods of assessment. New Brunswick assesses rates not only by industry or class assessment rates, but also uses experience rating. In all jurisdictions, the Board fixes rates per percentage of payroll by industry sector. Some rates include the costs of occupational health and safety, i.e., New Brunswick, Nova Scotia, and Manitoba. Others, such as Ontario and Yukon, do not include occupational health and safety costs in their assessment rates.

All jurisdictions require employers to submit a certified payroll statement or return to the Board on a yearly basis including actual payroll for the previous year. Some jurisdictions also request an estimate of payroll for the current year. In no case is an employer allowed to deduct from workers for payments or liabilities.

In New Brunswick, Policy No. 23-600: Setting Basic Assessment Rates provides the guidelines for setting yearly basic assessment rates. The following three stages provide summary explanations of the rate setting process:

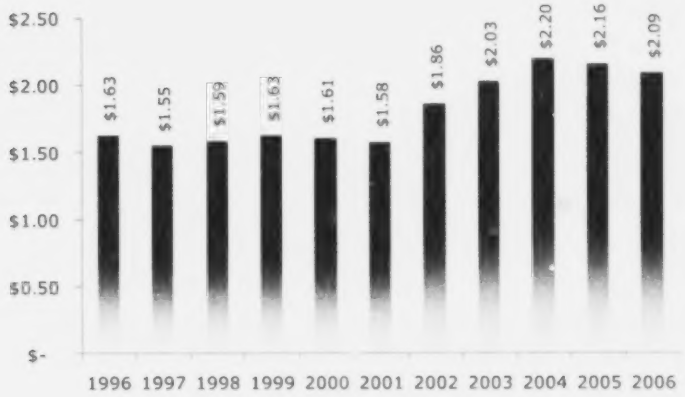
> Stage 1. Establish the projected total revenue requirement, as per Sections 52, 54(1.1) and 56(1.1) of the *Workers' Compensation Act*, for the year in question to meet the Commission's obligations.

Stage 2. Allocate the projected total revenue requirement to the industry groups, as per Policy No. 23-300: Employer Classification, on a basis that reflects historical accident cost experiences.

Stage 3. Apply the maximum increase or decrease to be applied to the assessment rate applicable to each industry grouping.

In 2008, the provisional (estimated) average assessment rate in New Brunswick is $2.05 per $100 of assessable payroll, the fourth consecutive annual decrease from the high of $2.20 in 2004. It remains the lowest in Atlantic Canada.

NB Average Assessment Rate History – 1996 to 2006
(Actual average per $100 of payroll)



Source: AWCBC Key Statistical Measures 1996-2005; 2006 WHSCC Stakeholder Report

Three factors that affect the average assessment rate are:

- Cost of new claims;
- Cost of administration/policy changes; and
- Surcharge/rebate to maintain 110 percent funding goal.

The following table shows the breakdown of New Brunswick's 2006 to 2008 provisional average assessment rates.

Breakdown of New Brunswick's Provisional Average Assessment Rates

	2006	2007	2008
Benefit costs	$1.41	$1.45	$1.44
Administrative costs	$0.45	$0.44	$0.45
Target funding level Provision for Uncertainty (2008)	$0.28	$0.21	$0.16
Total average assessment rate	**$2.14**	**$2.10**	**$2.05**

Source: WHSCC

The New Brunswick basic industry assessment rates for 2007 by standard industrial classification (SIC) ranged from $0.42 for communications, electrical power and gas distributors, finance, business services, and non-municipal government and educational to $8.49 in the plastic bag and shipbuilding, boatbuilding and repair industries.

Average Assessment and Minimum/Maximum Industry Rates per $100 of Assessable Payroll

Year	Average Assessment Rate	Minimum Industry Rate	Maximum Industry Rate
2000	$1.61	$0.15	$8.94
2001	$1.58	$0.15	$10.30
2002	$1.86	$0.25	$12.51
2003	$2.03	$0.30	$12.53
2004	$2.20	$0.35	$11.53
2005	$2.16	$0.40	$10.25
2006*	$2.14	$0.40	$9.66
2007*	$2.10	$0.42	$8.49

* Provisional Rates

Source: AWCBC Key Statistical Measures March 2007 - Provisional rate shown for 2006 and 2007 average assessment rate

New Brunswick assesses rates not only by industry or class assessment rates, but also uses experience rating.

> This system is intended to reduce claims costs and increase safety by applying assessment surcharges or rebates at the individual firm level. Surcharges and rebates are based on the firm's experience compared with the rest of the industry in which the firm is a member. Experience rating is also a mechanism for promoting equity among employers within a subclass, by reducing the extent to which employers with good claims experience subsidize the industry's poor performers.
>
> Application of the experience rating system also means that the lowest rate applied to an individual employer will actually be lower than the minimum rate, which is the lowest basic rate for a rate group. The same is true in the opposite direction for the highest rate charged to an employer. In 2007, the lowest rate that could be charged to an employer is $0.25 (40 percent reduction from the lowest basic rate of $0.42) and the highest rate that could be charged to an employer is $15.28 (surcharge of 80% on the highest basic rate of $8.49).[14]

[14] WHSCC Information Manual, p. 10.

For the past eight years, an independent WHSCC Client Satisfaction Survey has been conducted by Omnifacts Bristol Research. The following, taken from the December 2006 survey indicates registered employers were two percent more satisfied with assessment rates in 2006 than they have been since 2000.

Satisfaction with assessment rates
(Those completely or mostly satisfied)

	2000	2001	2002	2003	2004	2005	2006
Registered employers	71%	68%	65%	62%	64%	65%	73%

The table below provides key assessment rate information for 2007 per $100 payroll for each jurisdiction. Maximum assessable earnings are the maximum annual amount of earnings for each worker to be used in computing the amount of payroll for the purposes of assessment and are furthered discussed in the Coverage and Benefits section of the Report.

The provisional average assessment rates for 2007 ranged from $1.43 in Alberta to $2.75 in Newfoundland and Labrador with New Brunswick's set at $2.10. The lowest provisional assessment rates ranged from $0.08 in British Columbia to $1.09 in Yukon with New Brunswick's at $0.42. The highest provisional assessment rates ranged from $5.83 in Northwest Territories/Nunavut to $41.95 in Manitoba. New Brunswick's was set at $8.49.

Key Assessment Rate Information for 2007 per $100 payroll

	Maximum Assessable Earnings	Minimum Yearly Assessment	Lowest Assessment Rate	Highest Assessment Rate	Average Assessment Rate
AB	$64,600	$100	$0.22	$8.12	$1.43
BC	$64,400	$0	$0.08	$14.07	$1.69
MB	$71,000	*	$0.15	$41.95	$1.68
NB	$53,200	$100	$0.42	$8.49	$2.10
NL	$48,425	$50	$0.58	$27.50	$2.75
NT/NU	$69,200	$50	$0.46	$5.83	$1.71
NS	$46,700	$0	$0.55	$13.09	$2.65
ON	$71,800	$100	$0.17	$16.02	$2.26
PE	$44,700	$50 - $100	$0.28	$14.93	$2.22
QC	$59,000	$65	$0.58	$25.32	$2.24
SK	$55,000	$50	$0.17	$17.62	$1.84
YT	$73,200	$150	$1.09	$12.24	$2.64

Source: Association of Workers' Compensation Boards of Canada (AWCBC) - March 2007

As seen in the following table, in most jurisdictions the average assessment rate over the past eleven years has decreased with the

exception of the Maritime Provinces and Yukon whose rates have risen since 1997. The average assessment rate in the last five years in New Brunswick was $2.13 compared with $1.67 during the preceding five year period.

Trend – Average Assessment Rates per $100 Payroll

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
AB	1.48	1.34	1.07	1.12	1.31	1.64	1.94	1.96	1.83	1.67	1.43
BC	2.22	2.01	1.88	1.73	1.78	1.88	1.94	1.99	1.99	1.92	1.695
MB	2.07	1.86	1.46	1.49	1.52	1.493 / 1.564	1.62	1.71	1.72	1.68	1.68
NB	1.55	1.59	1.67	1.67	1.58	1.86	2.03	2.20	2.16	2.14	2.10
NL	2.97	2.96	2.97	3.23	3.22	3.50	3.36	3.41	3.30	2.75	2.75
NT/NU	2.36	1.93	1.20	1.04	1.18	1.28	1.45	1.82	1.96	1.87	1.71
NS	2.51	2.53	2.56	2.55	2.49	2.50	2.58	2.59	2.63	2.65	2.65
ON	2.85	2.59	2.42	2.29	2.13	2.13	2.19	2.19	2.23	2.26	2.26
PE	2.05	2.12	2.11	2.08	2.29	2.34	2.42	2.39	2.34	2.23	2.22
QC	2.52	2.47	2.22	2.07	1.90	1.85	1.93	2.15	2.29	2.32	2.24
SK	1.99	1.69	1.66	1.61	1.57	1.65	1.81	2.00	1.99	1.84	1.84
YT	1.69	1.56	1.26	1.29	1.30	1.28	1.38	1.54	1.79	2.16	2.64

Source: Association of Workers' Compensation Boards of Canada (AWCBC) - March 2007

During the past six years, all jurisdictions have shown an increase in the maximum assessable earnings considered when setting assessment rates ranging from a 6.43 percentage increase in Newfoundland and Labrador to a 32.69 percentage increase in Manitoba. New Brunswick's maximum assessable earnings have increased by 15.15 percent (see following table).

Maximum Assessable Earnings

	2001	2002	2003	2004	2005	2006	2007	% increase
AB	50,100	58,000	58,800	61,200	62,600	63,300	64,600	28.94 %
BC	58,500	59,600	60,100	60,700	61,300	62,400	64,400	10.09 %
MB	53,510	54,590	55,620	56,310	58,260	66,500	71,000	32.69 %
NB	46,200	47,600	48,400	50,000	50,900	51,900	53,200	15.15 %
NL	45,500	45,500	45,500	45,500	46,275	47,245	48,425	6.43 %
NT/NU	63,350	63,350	64,500	66,500	66,500	67,500	69,200	9.23 %
NS	41,100	41,100	41,800	43,200	43,800	45,100	46,700	13.63 %
ON	60,600	64,600	65,600	66,800	67,700	69,400	71,800	18.48 %
PE	38,100	39,300	40,000	41,200	42,300	43,300	44,700	17.32 %
QC	51,500	52,500	53,500	55,000	56,000	57,000	59,000	14.56 %
SK	48,000	48,000	51,900	53,000	55,000	55,000	55,000	14.58 %
YT	62,400	65,100	66,200	65,800	67,000	69,500	73,200	17.31 %

Source: Association of Workers' Compensation Boards of Canada (AWCBC) - March 2007

Governance of the Financial Management Investment Portfolio

WHSCC

The WHSCC has a policy (No. 34-205) that outlines the Commission's Statement of Investment Philosophy and Beliefs and is categorized into the following areas:

- Governance;
- Fundamental risk;
- Asset allocation decision;
- Diversification;
- Disciplined approach to investing;
- Investment managers;
- Performance measurement;
- Education;
- Administration and management costs; and
- Code of ethics.

...funding goal increased from 105 percent to 110 percent.

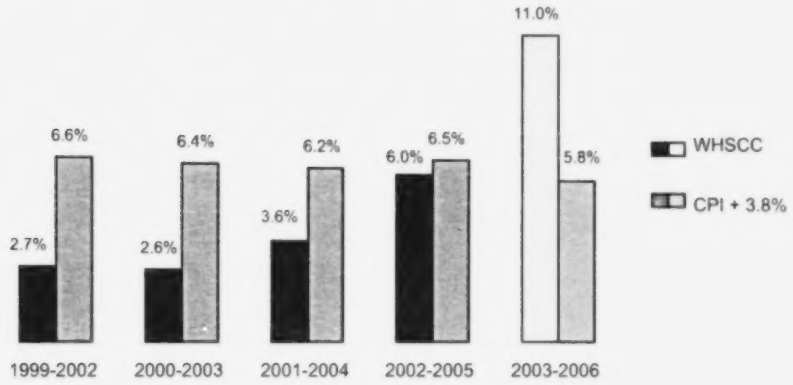
In 2006, the Board of Directors completed an asset liability study that resulted in changes to the long-term asset mix and the funding policy. "These changes are designed to reduce the volatility in the Commission's annually reported operating income, funded ratio and assessment rates, and to reduce the probability of becoming under-funded."[15] As a result of the study, the funding goal increased from 105 percent to 110 percent.

Investment income:

> Is relied on to supplement assessments to cover total expenses for the year. Built into the valuation of the benefits liabilities and into the assessment rate-setting model is the long-term assumption that the Commission's investments will generate an annual rate of return of 7.12%. The primary goal of the investment portfolio is to earn a return that meets or exceeds this actuarial discount rate. In 2006, the market rate of return on the portfolio was 13.3%. For the ten-year period ended December 31, 2006, the annualized market rate of return on the portfolio was 7.5%.
>
> The performance objective for the investment portfolio's rate of return is to exceed the increase in the Consumer Price Index (CPI) + 3.8 percent, on a four-year average basis. This was exceeded by more than five percentage points during the four year period 2003-2006 as can be seen in the graph below. In 2006, the market rate of return on the portfolio was 13.3 percent. For the 10-

[15] 2006 WHSCC Annual Report, p. 47.

year period ended December 31, 2006, the annualized market rate of return on the portfolio was 7.5 percent.[16]



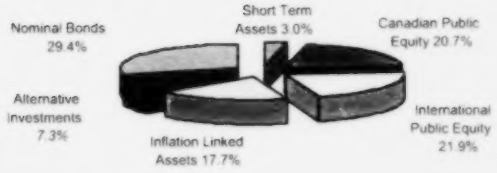
The New Brunswick Investment Management Corporation (NBIMC)

The New Brunswick Investment Management Corporation (NBIMC) is the trustee and investment manager for the pension assets of approximately 45,000 members of the Public Service, Teachers', and Judges' pension plans. "The two main objectives in terms of investment performance that NBIMC focuses on are the actuarial return requirements of the funds and adding value through active management strategies."[17] "The primary performance objective, as outlined by the plan actuary, is to achieve a long term real return (i.e., return after inflation) objective of more than 4.0 percent."[18]

The asset mix for the public service pension plan, as shown by the following chart, is somewhat different than WHSCC's investment portfolio. The percentage of Canadian equities invested is similar with 20 percent for WHSCC and 20.7 percent for the public service portfolio. At NBIMC, the inflation linked assets include real return bonds, real estate and infrastructure and commodities, which is 17.7 percent of the asset mix. New Brunswick's new target benchmark for real estate and real estate bonds is 15 percent.

[16] 2006 WHSCC Annual Report, p. 45.
[17] NB Investment Management Corporation 2006 Annual Report, p. 12.
[18] NBIMC 2006 Annual Report, p. 13.

Asset Mix
as of March 31, 2007

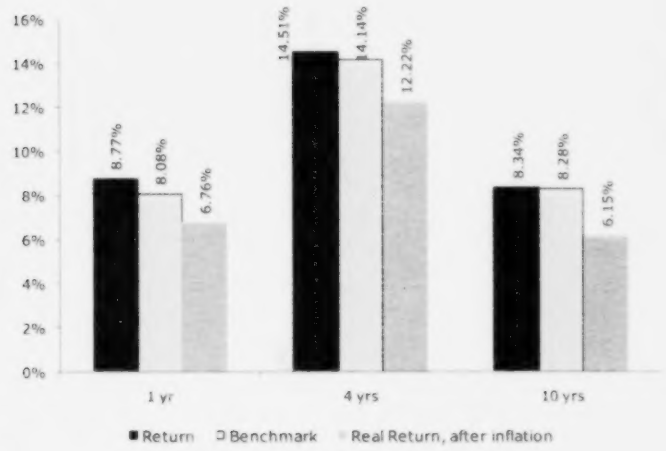


Source: 2006-2007 NBIMC Annual

In the 2006-2007 NBIMC Annual Report, the benchmark rate of return for NBIMC's total portfolio was 8.0 percent. The actual return for the same period was 8.68 percent. NBIMC's long term real return is 4.0 percent. WHSCC's long term assumed annual rate of return is 7.12 percent.[19]

When comparing a four year period (following chart), the investment performance is 1.21 percent greater for the NBIMC public service portfolio at a return of 14.51 percent compared to 13.3 percent for WHSCC's investment portfolio for the same four year period ending March 31, 2007. [20]

Investment Performance
as of March 31, 2007



Source: 2006-2007 NBIMC Annual Report

[19] 2006 WHSCC Annual Report, p. 45.
[20] Being Accountable: Working Toward Healthy and Safe Workplaces in New Brunswick, First Quarter Results 2007, p. 19.

Canada

Across Canada, the market rate of investment return on a market value basis for all portfolio assets, including investment cash, net of external investment expenses has varied greatly over the five-year period 2001 to 2005 (see table below). Negative returns were seen in most jurisdictions in 2001 and 2002. From 2003 to 2005, the return on investments improved with Québec's investments performing the best. New Brunswick's investment return varied from -0.30 percent in 2001 to a high of 12.40 percent in 2003.

The market rate of return on New Brunswick's portfolio was 13.3 percent in 2006.

Market Rate of Return

	2001	2002	2003	2004	2005
AB	0.00%	-2.50%	13.80%	10.00%	13.00%
BC	-0.80%	-2.30%	13.40%	10.30%	12.50%
MB	1.90%	-1.90%	11.00%	11.80%	12.40%
NB	-0.30%	-5.60%	12.40%	8.90%	9.50%
NL	4.10%	-5.00%	15.30%	8.40%	11.40%
NS	0.30%	-6.70%	12.70%	7.60%	10.50%
NT/NU	1.80%	-1.70%	11.00%	9.70%	11.16%
ON	-1.50%	-6.20%	12.80%	8.50%	10.50%
PE	-0.30%	-5.60%	12.40%	8.90%	9.50%
QC	-6.22%	-13.07%	15.35%	12.80%	15.70%
SK	2.70%	-1.50%	12.90%	10.70%	13.70%
YT	5.80%	-3.70%	8.20%	7.20%	8.00%
CA	**0.62%**	**-4.65%**	**12.60%**	**9.56%**	**11.49%**

Source: AWCBC Key Statistical Measures 2001-2005

Impacting on the volatility of investments and the market rate of return is the portfolio asset mix. As seen in the table below, there are numerous variations in the types of investments made by the Workers' Compensation Boards across Canada.

Portfolio Asset Mix – Policy Targets

	Conventional Bonds/ Real return Bonds	Canadian Fixed Income	Real Estate	Canadian Equity	US Equities	Global Equity	Emerging-markets equity	Other
AB	39.0% / 8%	-	8.0%	10.0%	-	30.0 %	4.0%	Cash and Cash equivalents 1%
BC	-	45% fixed income	10%	45% equities				-
MB	28.0%	-	12.5%	20.0%	19.0%	8.5%	2.5%	Mortgages 9.5%
NB	25% / 5%	-	10%	20%	18%	18%	4%	-
NL	-	35%	-	35%	15%	15%	-	-
NT/NU	-	30-50%	-	20-30%	10-20%	10-20%	-	-
NS	30% Bonds	-	10%	60% equities				-
ON	30% Bonds	-	5%	65% equities				-
PE								
QC	-	25% fixed income	-	39% equities 36% other investments				-
SK								
YT	35-85%	-	-	0-25%	0-25%	0-25%	-	Cash and Cash equivalents 0-5%

Source: 2006 Annual Reports /Policy Documents

Discussion of Key Issues

The WHSCC has legislative responsibility for occupational health and safety for all workers and employers in New Brunswick under the *Occupational Health and Safety Act* and the *Workplace Health, Safety and Compensation Commission Act*. Annually, the Commission receives $900,000 from the Provincial Government, which is generally used to support occupational health and safety initiatives.

From 2002 to 2005, the overall occupational health and safety costs increased by 22.27 percent and is discussed in greater detail in the Prevention of Injuries section of the Report. In 2002, the Provincial Government's share of total occupational health and safety costs ($6.98 million) represented 12.89 percent. In 2006, this same contribution from Government represented 10.55 percent of the total occupational health and safety costs ($8.53 million), a shrinking percentage of occupational health and safety costs.

Furthermore, no part of the administration fee charged to the Government is to cover occupational health and safety costs.

The level of benefits accorded to insure injured workers is (related to/dependent on) the funding of those benefits. Most insurance plans have limits on their benefits and the same goes for workers compensation benefits, as enunciated by Chief Justice William Meredith.

The Independent Review Panel notes that total benefits paid for current and prior accident years for assessed employers increased by 4.5 percent over the five-year period 2001 to 2005 compared to an increase of 11.4 percent for self-insured employers.

During the course of the Panel's deliberations, it was struck by the fact it did not appear that any consideration had been given in a formal or structural way for government to be a rate assessed employer. In a small province such as New Brunswick it is somewhat anomalous that the largest employer does not participate in the workplace health, safety and compensation system. Government might be better served by participating as it may not currently be providing all the rigor that the private sector is using, i.e., return to work programs and prevention initiatives.

If Government was to fully participate in the system, it would create greater opportunity for prevention and education initiatives. Morneau Sobeco advised the Independent Review Panel that whether or not Government remains self-insured or becomes an assessed employer, there would not be a significant cost factor for the Commission as long as assessment rates were appropriate. Government would need to either continue to pay cash costs on claims prior to changing to an assessed status or pay a lump sum to the Commission equal to the liability for the injured workers.[21]

The Independent Review Panel suggests Government should examine the potential benefits of becoming a rate assessed employer such as:

- No significant cost to be rate assessed as it is a revenue neutral issue;
- Could achieve considerable cost savings if able to achieve same reductions as the private sector in benefits costs; and
- There are potential benefits to the employer community and the Province such as spreading the risk of significant claims, i.e., pandemic influenza.

Consideration would have to be given to the issue of government's $105 million unfunded liability. This amount is similar to the Commission's projected unfunded liability of more than $100 million for 1992, which was perceived as a crisis at that time.

No jurisdiction has articulated a goal of less than being fully funded as its minimal goal. In New Brunswick, the legislation requires 100 percent funding over five years. In addition, the WHSCC has adopted a policy that accepts 110 percent as its funding goal.

During its consultation, the Independent Review Panel heard different points of view regarding the funding level. One view was that surpluses above 110 percent level should be returned to employers through lower assessment rates. Another was that 50 percent of

[21] Information provided by Morneau Sobeco, January 2008.

annual operating surpluses shall be allocated to further benefit improvements in future years. No one suggested that the funding level should be raised. The Independent Review Panel believes that the 110 percent funding goal currently set out in policy is reasonable to manage the system.

New Brunswick is well positioned financially and the security of New Brunswick workers' future benefits is well assured. The cost of a claim is paid by employers of today rather than running a debt to be paid by employers of tomorrow. As can be seen on the Balance Sheet on page 173, the total accumulated benefit liability has increased from $726.567 million in 2002 to 920.973 million in 2006 with an Accident Fund balance of $102.473 million in 2006.

The Independent Review Panel is aware that there are continuing risks in managing the system. Morneau Sobeco indicated there is always a great deal of volatility on investment return - $80 to $100 million swing is possible. Among other possible risks, an economic downturn such as New Brunswick is experiencing in the forestry industry can reduce assessment revenue, but may also result in increased claims costs.[22]

The WHSCC's efficiency goal states "We will hold the assessment rates to employers at the lowest level possible, consistent with the best possible benefits to clients," with a measure to maintain at a minimum a fully funded liability. The Board made changes to its long-term fiscal strategy policy to help reduce volatility in assessment rates and maintain the funded status of the Commission. With a fully funded liability, a surplus, and a change in policy, the question is raised why a portion of New Brunswick's 2008 assessment rate ($0.16) is being set aside as a "provision for uncertainty".

A review of rates across each jurisdiction indicates that New Brunswick's average rates are the lowest in Atlantic Canada and lower than those of Ontario and Québec, but higher than rates in Western Canada. This creates an economic advantage for doing business in New Brunswick and should be maintained.

Lost-time claims decreased by 20.21 percent over the period 2000 to 2005, while during the same period the assessment rates increased by 29.34 percent from $1.67 to $2.16. Furthermore, collectively, employers were paying $54.9 million more in 2005 than they were in 2001 or 61.1 percent more. The Panel accepts that the responsiveness of the assessment rate should be reflective of prevention initiatives and the reduction of accidents.

[22] Information provided by Morneau Sobeco, June 2007.

Recommendation #59

The Independent Review Panel recommends that Government as a self-assessed employer, study the benefits of being rate assessed.

Recommendation #60

The Independent Review Panel recommends the WHSCC, through its rate structure, should provide incentives to employers that have implemented successful prevention and return-to-work initiatives, including those developed through accreditation programs.

Recommendation #61

The Independent Review Panel recommends Government should address the question as to whether the costs of compliance as currently undertaken by the WHSCC, be borne by the general revenues of the Province of New Brunswick.

Recommendation #62

The Independent Review Panel recommends the principles of workers compensation established in the Meredith Report, including Security of Payment, should continue to guide the delivery and administration of workers compensation in New Brunswick.

Recommendation #63

The Independent Review Panel recommends the WHSCC maintain the goal of having the lowest average assessment rates in Atlantic Canada and be competitive with other Canadian jurisdictions.

Recommendation #64

The Independent Review Panel recommends that WHSCC maintain the 110 percent funding goal set out in policy, as a reasonable funding level in managing the system.

MANDATE QUESTION OVERVIEW

The Independent Review Panel was asked to assess how well does the New Brunswick Workplace Health, Safety and Compensation Commission compare to other Canadian jurisdictions in terms of financial performance, including the degree of security for benefits offered, stability of assessment rates, and governance of the financial management.

It is fair to say that the Workplace Health, Safety and Compensation Commission's financial performance has been superior over the past number of years and has resulted in a situation where benefits are secure, unlike some other jurisdictions that remain in an unfunded liability situation.

Assessment rates have decreased since 2004 and are the lowest in Atlantic Canada. The surcharge on the assessment rates for "target funding level" and the reduction in benefits in 1993 have assisted in achieving the degree of financial security the Commission currently enjoys.

In 2006, the Commission had a particularly positive financial performance. However, there is no guarantee this will repeat itself and the Board of Directors must continue to be fiscally prudent. The Board must be mindful of economic and other factors that impact the assessment revenue stream, market conditions affecting investment performance, as well as the other risks associated with managing the system. In 2005, assessments were 59.92 percent of revenue with investments contributing a significant percentage of the revenue stream - 26.75 percent. In 2006, there was a decrease in assessment revenue to 52.56 percent with investment income increasing to 36.96 percent.

During the consultations, the Independent Review Panel heard from certain stakeholders that the Commission should take a more aggressive and active approach in managing its investment portfolio. The WHSCC has consistently performed below the Canadian average market rate of return from 2001 to 2005. Now that the Commission is fully funded and indeed, has a surplus, the Panel suggests it should review, through the recommended Investment Committee, its investment approach to ensure the Commission's financial objectives remain suitable.

The Independent Review Panel believes it is important to have a competitive workplace health, safety and compensation system. It must be fully funded with security of benefits and the lowest possible assessment rates in Atlantic Canada.

Summary of Recommendations

Governance

1. *The Independent Review Panel recommends a new composition of the Board of Directors – a Chairperson, four employer and four worker representatives, as well as the President and CEO of the Commission and the Chair of the Appeals Tribunal, both as non-voting members. Consideration should also be given to a Vice-chair as part of succession planning for the Chair. As well, the Vice-chair would have specific responsibilities of chairing the Governance/Human Resources Committee recommended later in this section.*

2. *The Independent Review Panel recommends the elimination of the public member position from the Board of Directors.*

3. *The Independent Review Panel recommends the composition of the Board of Directors be representative of the various regions of New Brunswick and reflective of gender and diversity of all stakeholders of the Commission.*

4. *The Independent Review Panel recommends four year terms for the Chair and Board members which may be renewed once.*

5. *The Independent Review Panel recommends increased flexibility for appointments. Although the Act provides for staggered appointments for Board members it could also allow that if a replacement is appointed to a Board position, that person could be eligible to be re-appointed for two full terms, not just the remainder of the term appointment and one additional term.*

6. *The Independent Review Panel recommends the Board of Directors adopt a formal process to recruit, select, and appoint the President and CEO.*

7. *The Independent Review Panel recommends a formal process should be identified to select candidates for the Board of Directors.*

8. *The Independent Review Panel recommends the WHSCC develop a list of clearly defined competencies for the Board of Directors to ensure that individuals with the right skills are selected for nomination from the various stakeholder groups. It is expected the selection process be managed by the Board of Directors with the appointment by Government.*

9. *The Independent Review Panel recommends the establishment of three Committees of the Board of Directors to ensure specific oversight of certain critical areas – Investment Committee, Audit/Finance Committee, and Governance/Human Resources Committee. The Committees would be appointed by the Board on recommendation of the Chair and as always, ensuring equal stakeholder representation on each Committee.*

10. *The Independent Review Panel recommends the Government of New Brunswick direct the Auditor General to conduct a value-for-money audit of the WHSCC every five years to ensure public accountability of the Commission rather than mandatory periodic reviews by an independent commission.*

11. *The Independent Review Panel recommends that Government give the authority to the Workplace Health, Safety and Compensation Commission to negotiate, enter into, and sign its own collective agreements.*

12. *The Independent Review Panel recommends that WHSCC take measures to better define the roles and responsibilities of the Injured Workers' Advisory Committee.*

13. *The Independent Review Panel recommends the WHSCC develop a formal consultation process to ensure the active engagement of all stakeholders in the policy development and renewal processes.*

14. *The Independent Review Panel recommends the Commission's stakeholder list be posted on its website.*

15. *The Independent Review Panel recommends the Workers' Compensation Act should be written in plain and consistent language. It should be reorganized in a logical, sequential, and grouped manner and definitions throughout the Act should be updated and clarified where necessary.*

Prevention of Injuries

16. *The Independent Review Panel recommends the WHSCC actively pursue programs in consultation with stakeholders to achieve the governing goal of an improved safety culture and a zero tolerance of workplace injuries in New Brunswick.*

17. *The Independent Review Panel recommends that occupational health and safety be an integral part of the New Brunswick school curriculum.*

18. *The Independent Review Committee recommends that the Commission's focus on youth be expanded to new employee orientation, new employee job safety, and seniors returning to employment, with an emphasis on the promotion of safety for anyone starting a new job.*

19. *The Independent Review Committee recommends that the Commission explore opportunities to provide funding for the development and offering of training programs and resources by external agencies, including cooperative programs with the New Brunswick Federation of Labour, Canadian Federation of Independent Business, and others.*

20. *The Independent Review Committee recommends the allocation of resources by the Commission for the development of web based safety training programs with focus areas respecting legislative requirements, management responsibilities, and orientation programs for new workers.*

21. *The Independent Review Panel recommends the WHSCC expand safety association programs similar to the Construction and Forestry industries model to other industry sectors, including health care.*

22. *The Independent Review Panel recommends increasing the provincial government grant to WHSCC to cover costs of non-assessed employers,*

including self-insured employers, to reflect cost of the service and to allow for additional inspections for self-insured and non-insured employers.

23. *The Independent Review Panel recommends the Commission review the compliance and enforcement tools available to it, including additional inspections, stop-work orders, ticketing, and demerit fines in workplaces requiring increased attention, as well as incentives for undertaking effective prevention programs.*

24. *The Independent Review Panel acknowledges that the introduction of new industries coming to New Brunswick and the expansion of some existing industries may present special prevention challenges and recommends the Commission appropriate the resources required to address these industries and projects.*

Coverage and Benefits

25. *The Independent Review Panel recommends that the Commission engage in consultations with the fishing industry to determine whether that industry should continue to be exempt from mandatory coverage. Any extension of coverage should only occur after employers and workers in this industry have had a full and free opportunity for consultation with the WHSCC.*

26. *The Independent Review Panel recommends that the Commission be proactive in promoting the availability of voluntary coverage for small employers.*

27. *The Independent Review Panel recommends the WHSCC give timely consideration to alternatives to benefit changes including:*

- *A reduction of the waiting period to two days and a reimbursement of the two-day wait after 10 days on claim; and*
- *The establishment of rules for compensation of injured workers for the day of an injury provided the worker reports the injury that day.*

28. *The Independent Review Panel recommends all options for benefit change by the WHSCC be consistent with the goal of maintaining a stable assessment rate and fully funded liability.*

29. *The Independent Review Panel recommends the Commission adopt policies or procedures including periodic follow-up reviews, to confirm any estimated earning capacities for individual injured workers are realistic, reasonable, achievable, and supported by information that justifies the estimation.*

30. *The Independent Review Panel recommends the WHSCC evaluate whether the current five percent annuity level is adequate to achieve the original general purpose identified as an offset for potential deficits in the Canada Pension Plan and/or employer sponsored contributions at age 65 when wage loss benefits cease.*

31. *The Independent Review Panel recommends the WHSCC review its policy on the level of annuity payments that may be paid as a lump sum.*

Claims Process/Health Care Delivery

32. *The Independent Review Panel recommends the WHSCC direct a thorough study of the current legislative definition provisions for benefits entitlement to determine the impact of the "in the absence of any evidence to the contrary" standard.*

33. *The Independent Review Panel recommends a comprehensive review of case management policies, processes, and a restructuring of resources to ensure reasonable caseloads to permit WHSCC staff to provide timely and effective transition services to workers and their families.*

34. *The Independent Review Panel recommends the Commission provide ongoing client service training including specific training in the handling of difficult communications with injured workers.*

35. *The Independent Review Panel recommends the Commission offer mediation when the client/case manager relation becomes dysfunctional.*

36. *The Independent Review Panel recommends the WHSCC establish an ongoing awareness and educational campaign for both workers and employers directed to ensure both parties know and understand their claims reporting responsibilities and rights.*

37. *The Independent Review Panel recommends that once the Form 67 pilot project with pilot employers has been completed and assessed, the electronic version should be available on the WHSCC website for all employers and workers to access. Furthermore, technical assistance should be available to those who are not fully conversant with the use of computers to assist with completing the form.*

38. *The Independent Review Panel recommends the WHSCC undertake a process to maximize efforts to ensure the time to first payment for new lost-time claims is at a minimum.*

39. *The Independent Review Panel recommends the following principle be added to the Commission's goals when developing a re-employment plan: "Retraining for current jobs that are suitable and reasonably available."*

40. *The Independent Review Panel recommends the WHSCC encourage stakeholders to establish joint return to work committees in the workplace.*

41. *The Independent Review Panel recommends that WHSCC direct an information/education process as to the rights and responsibilities of employers and workers, as well as the enforcement of responsibilities regarding the re-employment obligation.*

42. *The Independent Review Panel recommends the legislation to be clarified to confirm that the return to work provisions in the Act do not relieve employers, unions, and workers from fulfilling their obligations regarding accommodation and return to work as required by the Human Rights Code.*

43. *The Independent Review Panel recommends that when communication between workplace parties ceases, or if workplace parties are not cooperating in a re-employment process, the Commission may implement third party mediation to help workplace parties find a resolution.*

44. *The Independent Review Panel recommends developing return to work incentives for smaller employers.*

45. *The Independent Review Panel recommends the Commission engage in a process to establish new arrangements and partnerships with facilities within the provincial health care system to facilitate timely medical diagnosis, treatment, and rehabilitation throughout New Brunswick.*

46. *The Independent Review Panel recommends that government remove barriers that impede such arrangements and partnerships without affecting the integrity of the current public health system.*

47. *The Independent Review Panel recommends the Board of Directors explore options to enhance or expand services offered at the Workers' Rehabilitation Centre with increased medical/specialist involvement.*

48. *The Independent Review Panel recommends a "value for money" audit be undertaken to determine if services could be more cost effectively provided or expanded at the Workers' Rehabilitation Centre.*

Appeals Tribunal

49. *The Independent Review Panel recommends a formal process be developed by WHSCC relating to the nomination of the Chairperson of the Appeals Tribunal in consultation with stakeholders.*

50. *The Independent Review Panel recommends a formal process be developed by WHSCC relating to the nomination of the Vice - chairs of the Appeals Tribunal in consultation with stakeholders.*

51. *The Independent Review Panel recommends terms for Appeals Tribunal Vice-chairs and members be extended to four years.*

52. *The Independent Review Panel recommends that upon the filing of an appeal, the Appeals Tribunal would be obliged to notify the Commission of the appeal. The Commission would then be required to review its decision and either confirm, vary, or reverse the decision, with written explanation based on policy. This explanation would be provided to the Appeals Tribunal and the appellant within 30 days of being notified of an appeal.*

53. *The Independent Review Panel recommends the Appeals Tribunal review its processes and timelines and articulate specific benchmarks (service standards) from receipt of appeal, to hearing of an appeal, to a written decision.*

54. *The Independent Review Panel recommends the development of a process to prescreen appeals, based on the notion that not all appeals require a full oral hearing. The Chair of the Appeals Tribunal would determine whether or not an appeal needs a full oral hearing or a hearing by a single Chair/Vice-chair on the basis of the record.*

55. *The Independent Review Panel recommends a statutory right of appeal to the Court of Appeal be maintained in the legislation, but that the current procedure for appeal be reviewed.*

56. *The Independent Review Panel recommends that the Workers' Advocates mandate and job description be revisited in light of the Panel's recommendations.*

57. *The Independent Review Panel recommends that Workers' and Employers' Advocates have electronic access to WHSCC files from secure terminals, not only terminals located in WHSCC regional offices.*

58. *The Independent Review Panel recommends remuneration of the Appeals Tribunal positions be regularly reviewed to ensure per diem rates are competitive.*

Financial Performance

59. *The Independent Review Panel recommends that Government as a self-assessed employer, study the benefits of being rate assessed.*

60. *The Independent Review Panel recommends the WHSCC, through its rate structure, should provide incentives to employers that have implemented successful prevention and return-to-work initiatives, including those developed through accreditation programs.*

61. *The Independent Review Panel recommends Government should address the question as to whether the costs of compliance as currently undertaken by the WHSCC, be borne by the general revenues of the Province of New Brunswick.*

62. *The Independent Review Panel recommends the principles of workers compensation established in the Meredith Report, including Security of Payment, should continue to guide the delivery and administration of workers compensation in New Brunswick.*

63. *The Independent Review Panel recommends the WHSCC maintain the goal of having the lowest average assessment rates in Atlantic Canada and be competitive with other Canadian jurisdictions.*

64. *The Independent Review Panel recommends that WHSCC maintain the 110 percent funding goal set out in policy, as a reasonable funding level in managing the system.*

Mandate

In order to determine whether the workplace health, safety and compensation system is functioning appropriately and to its fullest potential, consideration must be given to what a New Brunswick worker faces when an injury occurs. To address this, two questions have emerged. Is the workplace health, safety and compensation system adequate compared to its Canadian counterparts? Does the Workplace Health, Safety and Compensation Commission provide appropriate coverage within the New Brunswick economic and social context?

The following mandate was developed to ensure the Review Panel arrives at a comprehensive and well-founded response to these questions, within a reasonable timeframe. The Review Panel's mandate comprises the following five elements:

1. Independent and Comprehensive Review
2. Parameters of the Review
3. Time Frame
4. Panel Members
5. Deliverables

1. Independent and Comprehensive Review

The work of the Review Panel must be independent from the undue influence of any one interest group. The independence of the Review Panel will be fostered through independent research and respectful consultations and dialogue among interested parties.

2. Parameters of Review

It is suggested the review be conducted in the following four phases:

Phase I
Phase I will entail an open-ended and comprehensive examination of the workplace health, safety and compensation environment, allowing the Review Panel to pursue identified and unidentified areas of potential concern. The Review Panel will conduct an environmental scan of workplace health, safety and compensation to ascertain the current workplace environment, including the administration of the Workplace Health Safety and Compensation Commission and the services it provides.

The environmental scan may involve formal and informal discussions with officials from the Workplace Health, Safety and Compensation Commission and service providers involved in the delivery of workplace health, safety and compensation programs and services.

Phase II
Activities in Phase II will be based on the outcomes from Phase I. The Review Panel will develop a strategy for inter-jurisdictional consultations, which shall include a thorough analysis of the New Brunswick workplace health, safety and compensation system in comparison with equivalent systems currently in place in all other Canadian jurisdictions. The Review Panel will develop appropriate consultation tools

(e.g., questionnaire) to ensure the completion of a comprehensive and effective comparative analysis.

Without prejudicing the outcomes of Phase I, at a minimum, the following questions will be addressed in Phase II:

I. How well does the Workplace Health Safety and Compensation Commission's legislated scope of coverage compare to other Canadian jurisdictions, including: number of workers covered; benefits offered to injured workers; treatment of workers while on benefits, and back-to-work activity reports.
II. How well does the Workplace Health Safety and Compensation Commission compare to other Canadian jurisdictions in terms of financial performance, including the degree of security for benefits offered; stability of assessment rates, and governance of the financial management.
III. How well does the Workplace Health, Safety and Compensation Commission address prevention of injuries, including occupational health and safety education; resources allocated to education, and results achieved, such as measures of accident frequency?
IV. How well does the Workplace Health, Safety and Compensation Commission compare to other Canadian jurisdictions in terms of the structure of the board of governance, policy development and foresight, and stakeholder input.
V. How well does the New Brunswick workplace health, safety and compensation appeal system compare in terms of processes, cost and efficiency.
VI. How well does the New Brunswick Workplace Health, Safety and Compensation Commission's relationship with healthcare and income support providers compare to the relationships held by other Canadian workplace health, safety and compensation groups and their providers?

Phase III
In Phase III, the Review Panel will develop and execute a targeted consultation to engage key stakeholders and obtain feedback on the findings from Phases I and II. Stakeholder perspectives and recommendations will be sought.

Phase IV
In Phase IV, the Review Panel will develop a Final Report summarizing the findings and analytical conclusions drawn from Phases I, II and III, as well as the methodology used for each stage.

The Final Report will detail specific recommendations for changes to the New Brunswick Workplace Health, Safety and Compensation Commission and will provide a detailed rationale for each recommendation.

The Final Report will also detail possible benchmarks, including detailed rationale for each.

The Final Report will be submitted by the Review Panel Chair, on behalf of the Review Panel, to the Workplace Health, Safety and Compensation Commission and the Minister of Post-Secondary Education, Training and Labour.

3. Timeframe

The Review Panel will commence in May 2007 and will complete its mandate no later than January 2008.

4. Review Panel Members

The Review Panel comprises three members appointed by government to carry out the mandate. One member is appointed as Chair.

Review Panel members include a representative of labour and a representative of employers. The Chair is a neutral third party.

All Review Panel members will be highly respected individuals, with prior knowledge of how workers' compensation systems function and an understanding of the fragile environment in which these agencies operate.

At least one Review Panel member will be fluent in each official language.

The Review Panel will be supported by an Executive Co-ordinator who will oversee all phases and provide support as needed, including drafting the final report under the direction of the Review Panel.

The Review Panel will strive for consensus in all matters.

The Chair will be tasked with the overall direction and co-ordination of the review. As such, s/he will be responsible for ensuring the mandate of the Review Panel is clearly respected.

5. Deliverables

The deliverables include a Final Report which will be released publicly in both official languages.

In the Final Report, the Review Panel should detail the methodology adopted for each phase, findings and analysis, specific and realistic recommendations for possible changes to the New Brunswick Workplace Health, Safety and Compensation Commission.

The Review Panel will establish benchmarks in key areas (determined through the review process) and provide a rationale for their selection.

The Final Report will be submitted **simultaneously** to the Workplace Health, Safety and Compensation Commission and the Minister of Post-Secondary Education, Training and Labour no later than January 2008.

Briefs and Comments

The following briefs and comments are available on the Independent Review Panel's website at www.gnb.ca/irp-cri.

Advocates, Employers' and Workers'

Anonymous Injured Workers (8)

Anonymous Safety Officer (1)

Bakery, Confectionary, Tobacco Workers & Grain Millers International Union Local 406 AFL – CIO, CLC

Canadian Federation of Independent Business

Canadian Manufacturers & Exporters

Canadian Restaurant and Foodservices Association

Construction Association of NB

CUPE 2464 Mill Cove Nursing Home Inc.

CUPE New Brunswick

DeLong, Wayne

Don Sayers and Associates

Duguay, Pierrette

Dunsford, Bob

Fournier, Donald

Gauvin, Oscar

Giggie, Lloyd

Goodheart, Tony

Hayes, Murray

Hebert, Elaine

Kierstead, Richard

Lucas, Barbara

McKee, Norman

Moncton and District Labour Council

NB Advisory Council on the Status of Women

NB Association of Chiefs of Police

NB Council of Nursing Home Unions

NB Federation of Labour

NB Forest Products Association

NB Nurses Union

NB Police Association

NB Power Group of Companies

NB Roofing Contractors Association Inc.

Office of the Workers' Advocates

Parks, Ann

Public Service Alliance of Canada

Rickards, Jeremy

Ringuette, Jacques

Saint John Construction Association Inc.

Saint John District Labour Council

Saint John Labour Community Services Inc.

Sargeant, Harold

Sheet Metal Workers' International Association - Local 437

St. Thomas University

Sunny Corner Enterprises Inc.

The NB Association of Nursing Homes INc.

United Steelworkers - District 6

United Steelworkers - Local 5385

van Putten, Jan

Volunteer Firefighters submitted by A.E. MacDonald (15 individual submissions to support)

Appendix 2
Consultations

Presentations

The following groups and individuals registered with the Panel to make presentations during the public consultation meetings. Summaries are available on the Independent Review Panel's website at www.gnb.ca/irp-cri

Edmundston – November 5, 2007

Public Consultation:

Chenard Consultant Ltée – *Laval Chenard*

CUPE 1253 - *Linwood Lawrence*

Injured Workers - *Anonymous (1)*
Jacques Ringuette

Fredericton – November 6, 2007

Targeted Stakeholders:

Construction Association of NB

NB Nursing Homes Association

NB Power Group of Companies

Public Consultation:

Appeals Tribunal Member – *Linwood Lawrence*

CUPE 1253 – *Delalene Harris-Foran*

CUPE NB – *Rosane Carter and Norma Robinson*

NB Council of Nursing Home Unions – *Valerie Black*

NB Federation of Labour – *Gordon Black, Michel Boudreau, Danny King, John Murphy, Ron Oldfield, Anne Robichaud and Ken Thompson*

Fredericton – November 7, 2007

Targeted Stakeholders:

Canadian Federation of Independent Business

Saint John – November 7, 2007

Targeted Stakeholders:

NB Police Association

Public Consultation:

Appeals Tribunal Member – *Mike Davidson (CUPE National)*

CUPE 380 – *Wayne Keleher (Injured Worker)*

CUPE 946 – *Leah Logan-Guimond*

CUPE 1603 – *Jeanne Basque (Injured Worker) and Tammy Nadeau*

CUPE 2745 – *Sharon Thompson*

CUPE 2745, sub-local 12 – *Christine Benjamin*

CUPE National – *Vallie Stearns*

CUPE NB – *Rick McMillan*

Injured Workers - *Anonymous (1)*
Lydia Duguay
Murray Goodwin

MLA – *Abel Leblanc*

NB Federation of Labour – *Michel Boudreau*

NDP NB Leader – *Roger Duguay*

Saint John District Labour Council – *Ron Oldfield*

Saint John Labour Community Services – *Denyse Kyle and Wendy McGee*

Appendix 2
Consultations

Bathurst – November 21, 2007

Public Consultation:

Bathurst District Labour Council – *John Gagnon*

CUPE 2354 – *Nicole Thériault (Injured Worker)*

Gauvin Réfrigération Inc. – *Oscar Gauvin*

Injured Workers - *Anonymous (1)*
Roger LeBlanc (Yvette)
Marcel LeClair
Clarence Légère
Côme McGraw
Keith Murphy
Donald Pollack
Gérard Roussel

Labour Council of Miramichi – *Danny King*

Sunny Corner Enterprises Inc. – *Gordie Lavoie*

United Steelworkers, Local 5385 – *Ken Smith*

Moncton – November 22, 2007

Targeted Stakeholders:

Canadian Manufacturers and Exporters

Canadian Restaurant and Foodservices Association

NB Building and Construction Trades Council

Road Builders Association of NB

Moncton – November 22, 2007

Public Consultation:

Appeals Tribunal Member – *Earl Garland*

Bakery, Confectionary, Tobacco Workers & Grain Millers International Union Local 406 AFL – CIO, CLC – *Albert Kingsley (Injured Worker)*

CUPE NB – *Raymond Légère*

CUPE 1253 – *Lawrence Jacques and Jean-Yves Maillet*

Injured Workers - *Bob Dunsford*
Richard Kierstead
Ron Richard

Moncton and District Labour Council – *Ken Thompson*

Public Service Alliance of Canada – *Tania Haché and Nancy Maclean*

Retired WHSCC Board Member – *John Murphy*

Many other groups and individuals addressed the Panel during the public consultations. Some came with a prepared statement, others commented and finally some individuals simply chose to attend and listen to what others had to say.

Province of New Brunswick

Independent Review Panel

Workplace Health, Safety and Compensation System

Report on Certain Coverage, Benefit Provisions
And Operational Aspects of the Current System

February 2008

Appendix 3
Actuarial Report
Morneau Sobeco

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Section 1 - Introduction

The Independent Review Panel (Panel) retained the services of Morneau Sobeco to assist them in understanding the implications for all stakeholders and, where applicable, the cost of potential changes to certain coverage and benefit provisions of the Workers Compensation Act (Act). In addition, the Panel asked for comments and the cost impact of certain operational aspects of the system.

Morneau Sobeco is a Human Resource Consulting and Administrative Solutions firm which provides actuarial and financial consulting services to several workers compensation boards/commissions in Canada. Morneau Sobeco is currently the consulting and valuation actuary for the New Brunswick Workplace Health Safety and Compensation Commission (Commission).

This report was prepared at the request of the Panel for inclusion as an Appendix to their final report. The panel asked for a summary report of the issues discussed as a result of the questions posed to Morneau Sobeco. In areas where results of cost estimates are provided, the report does not provide the details that would normally be found in an actuarial costing or valuation report. Instead, a summary of the key factors considered and the results are presented on a condensed basis. We would be pleased to prepare a detailed report if requested.

The Panel requested cost estimates where possible and comments on the issues to consider if certain changes were introduced to coverage and benefit provisions of the Act and certain operational aspects of the Commission. We divided the requests into three broad categories as follows:

1. Coverage Provisions of the Act
2. Benefit Provisions of the Act
3. Operational Aspects of the System

The areas Morneau Sobeco was asked to review are presented in Table 1.1 on the next page along with the Section in which it is addressed in this report, and a brief comment on the nature of the work requested.

Appendix 3
Actuarial Report
Morneau Sobeco

Table 1.1 Work Requested by the Panel

Section and Area	Work requested
Section 2. Coverage Provisions	
a) Universal Coverage	Comment on impact of expanding compulsory coverage to all employers regardless of number of employees, including fishers.
b) Maximum Assessable Earnings	Compare maximum in New Brunswick to other jurisdictions and comment on the effect of either removing the maximum or increasing it to two times the NBIAE (as defined in the Act).
Section 3. Benefit Provisions	
a) 3 day Waiting Period	Assess the financial impact of eliminating or reducing the 3 day waiting period.
b) Annuity Provision	Assess the impact of increasing the current 5% annuity provision to 8% of wage loss benefit payments after 24 consecutive months of compensation.
c) Top-up of Benefits	Explain the approach taken in Nova Scotia in 1999 to eliminate the disincentive to employers of allowing or negotiating top-up of workers compensation benefits paid to injured workers.
Section 4. Operational Aspects	
a) CPPD mandatory	Assess the potential financial impact, if possible, of introducing a provision that would require all injured workers to apply for Canada Pension Plan Disability (CPPD) benefits when they are expected to receive a long term disability benefit from the Commission.
b) Government Assessed	Comment on the impact on Government and other employers of requiring that Government become an assessed employer instead of the current self -insured arrangement.
c) Duration of Claims	Comment on and assess the impact of a reduction of 10% and 20% in the duration of lost time claims.

The Sections in the report follow the sequence presented in Table 1 above.

Section 2 – Coverage Provisions

The Panel asked for our comments on the impact on the workers compensation system of changes that could be considered in areas that we categorized as coverage issues. In considering coverage issues, the financial impact on the system itself is usually not an important factor so long as the assessments collected for the extra coverage reasonably reflect the cost experience associated with the change in coverage.

The two areas where changes in coverage could be considered are:

a) Universal coverage
b) Increase in maximum assessable earnings

Our comments are presented below.

2. a) Universal Coverage

The two changes we were asked to comment on are:

- Elimination of the requirement to have a minimum of three workers for compulsory coverage under the Act;
- Elimination of the requirement to have a minimum of 25 workers for compulsory coverage of fishers under the Act.

Currently about 94% of workers in New Brunswick are covered under the Act. In effect, workers employed by employers of less than three workers and by fishers employing less than 25 workers represent about 6% of the employed labour force. This represents about 19,000 workers. In addition, self-employed individuals (about 41,000 individuals based on November 2006 information from Statistics Canada) are not covered under the Act.

New Brunswick is among the jurisdictions with the highest proportion of workers covered in Canada. There are some jurisdictions that do not require compulsory coverage for certain industries, and thus cover a smaller proportion of workers.

Extending coverage to about 19,000 additional workers would not be expected to have a material impact on the finances of the workers compensation system because additional assessments would be collected to cover these workers. As long as the claims experience for these workers is in line with the assessments paid, the system should not experience any financial gains or losses as a result of such a change.

The number of employers that would be required to register would likely exceed 10,000. This would mean increased administrative effort by Commission staff to register and audit the employers and collect assessments. There are currently about 13,500 employers

registered. A change to universal coverage would be expected to about double the number of accounts to be administered. Therefore, it would be expected that the Assessment Department staff would have an increased workload and may well require additional staffing resulting in increased administrative costs to be shared by all employers.

Extension of coverage to smaller employers may also create a need to develop more extensive rules for the coverage of family members, proprietors, working owners, non-working owners and so on to the extent that these rules do not already exist.

Registration of fishers and collection of assessments may present unique challenges given the uncertainties around the value of the catch, and thus the income of fishers, and the seasonal nature of these activities. Fishers are required to register for coverage in Newfoundland and Labrador and their assessments are paid by the fish buyers as a percent of the fish sold. Should a decision be made to extend compulsory coverage to fishers with less than 25 workers, we would suggest a review be carried out on the most appropriate approach to set and collect assessments.

Finally, if coverage was extended to self employed individuals who technically may not be seen as workers, there would be a need to develop rules around the determination of earnings levels, the treatment of late registrants and the administration of claims for self-employed individuals who failed to register before being involved in an accident. This group could present an added cost risk due to the challenge in registering the accounts on time, the possible large swings in wages reported and the challenges around return to work efforts (for example., a self-employed individual's business may no longer be viable after an extended absence from work).

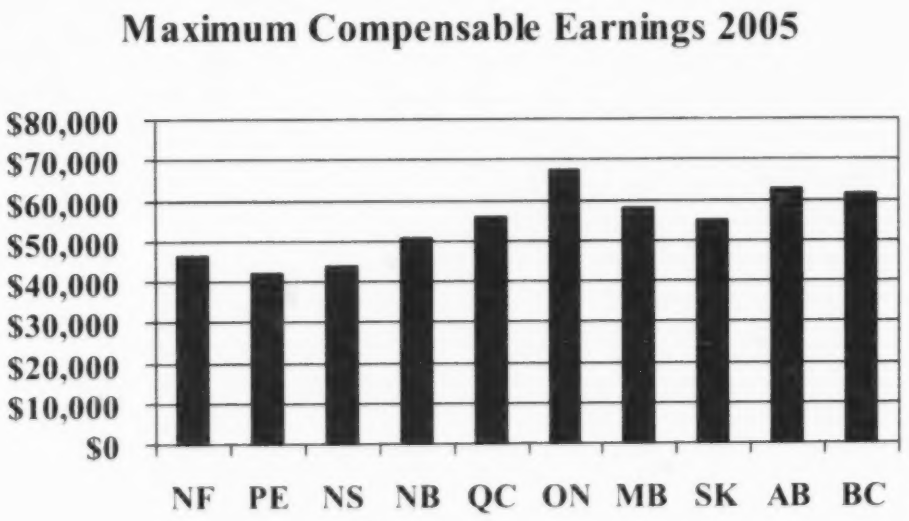
It is important to note that once the Act requires coverage, it does not matter whether the employer has registered and paid assessments, an injured worker is entitled to benefits under the Act and the Commission would have to pay such benefits. While the Commission may have recourse against the employer, this recourse would be expected to be limited in most circumstances. In summary, expanding compulsory coverage to more employers will lead to increased administrative effort and likely administration costs but will not necessarily lead to financial losses as long as the assessments collected appropriately reflect the added risk.

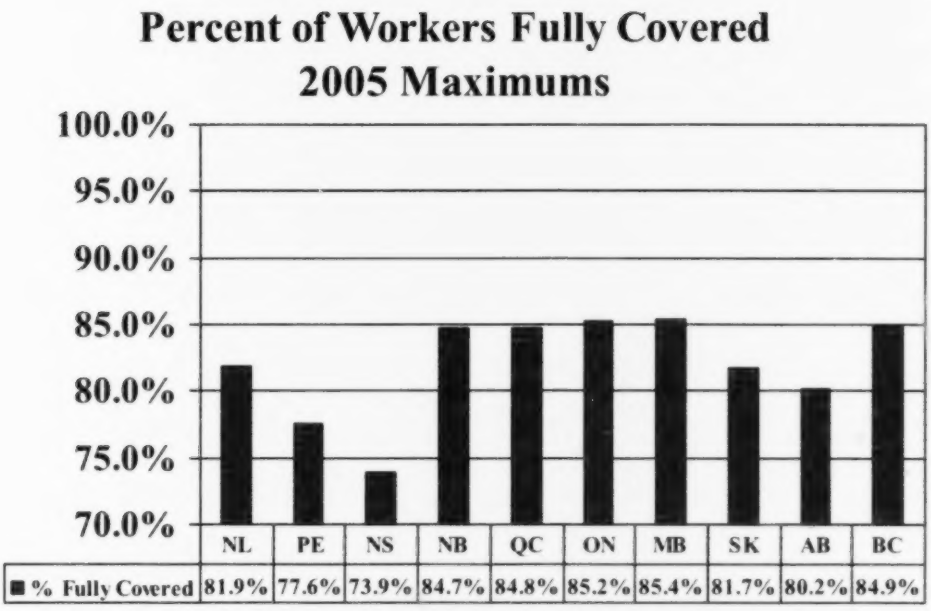
The Review Panel request was as follows:

- Provide a comparison of maximum compensable earnings (MCE) across Canada taking into account the earnings levels of workers in each province
- Comment on the implications of
    - Removing the MCE
    - Changing the MCE from 1.5 to 2 times the NBIAE

The comparisons were carried out using income data from 2005 and the MCE in each province in the same year. The income data consisted of the "Distribution of Total Income of Individuals 2005, constant dollars, annual" obtained from Statistics Canada. The table is based on total income, which includes government transfers and investment income. In addition, it includes all individuals regardless of age. We adjusted the data to remove the population over age 65 by assuming they were all in the lowest income group. As such the data used overstates the true earning levels of individuals to some degree but assuming all individuals over age 65 were in the lowest income group compensates at least in part for this overstatement.

This data was used to estimate the proportion of workers in each province that are not affected by the MCE because they are earning less than the MCE. The 2005 MCE in each province and the proportion of workers not affected by the MCE are shown in the following two charts.





The proportion of workers fully covered (i.e., earning less than the MCE) in New Brunswick is estimated at just under 85% in 2005 which is very close to the top four other provinces which also are close to 85%. On this basis the MCE in New Brunswick in 2005 provides comparable coverage to that of the best in Canada.

We also calculated the proportion of workers earning less than $80,000, $90,000 and $100,000. In other words, if the MCE was set at those levels, what would be the proportion of workers unaffected by the MCE? These results are presented in Table 2.1 below.

MCE Level	Proportion
$80,000	96%
$90,000	97%
$100,000	98%

We also estimated that if the goal was to provide full coverage to 90% or 95% of workers, the MCE would have to be set at about $60,000 and $74,000 in 2005 dollars respectively. If the MCE was set at two times the NBIAE as defined in the Act, the MCE in 2005 would have been $67,900 instead of $50,900.

The above information is not perfect but it gives reasonable interprovincial comparisons and provides a certain order of magnitude of changes required depending on the desired proportion of workers who would have earnings below the MCE.

Removal of the MCE could lead to a risk potential beyond that which might be desired by the system's stakeholders. A serious injury or a fatality involving a very highly paid worker could lead to a noticeable impact on the assessment rates of all employers through the collective liability portion of the assessment rates. Usually, insurance programs introduce maximums as a risk management feature, which are seen as important to control and maintain stability of the costs of the program

The key issues with an increase in the Maximum Compensable Earnings are:

- Risk management (impact of potentially large claims)
- Increased assessments for employers with workers above the current maximum
    - Some industries would be impacted more than others (for example certain employers in manufacturing, natural resources and health care as well as some municipalities)
    - The increased assessments that would have to be paid could be significant for some employers

For the workers compensation system, the financial impact would not be expected to be material. As for the universal coverage question discussed above, increased coverage leads to increased assessment revenue. As long as the assessments charged are adequate, there should be sufficient income to cover the risk with the exception that removal of the maximum could lead to a situation where in a given year the assessment revenue is inadequate. The average assessment rate could go up or down depending on distribution of industries most impacted and their corresponding assessment rates.

Section 3 – Benefits Provisions

The Panel asked for our comments on the impact on the workers compensation system of changes in certain benefits provisions. In this area an estimate of cost, to the extent that data is available, was required.

The three areas where changes in coverage could be considered are:

a) Three day waiting period
b) Annuity provision
c) Top-up benefits

Our comments are presented below.

3.a) Three Day Waiting Period

The Panel requested a cost estimate of the following:

- Removal of the three day waiting period
- Replace the three day waiting period with a two day waiting period
- Replace the three day waiting period with a one day waiting period

The introduction of changes to the Act on January 1, 1993, along with changes in the administrative policies and practices regarding claims management, coincided with a significant reduction in new claims from 1992 to 1994. Removal of the three day waiting period which was part of the 1993 changes could well lead to a partial reversal of the reduction in new claims volume that was experienced in the two year period following the introduction of the 1993 changes. In fact, there was a small increase in new claims volume with the modest improvement in benefits in 1998 (i.e., most important change was a change to wage loss benefits for the first 39 weeks following injury from 80% to 85% of net wage loss).

The claiming patterns under insurance programs of all types (other than life insurance) are affected by the benefit levels and ease of access. There are many studies and examples from the auto insurance industry, private disability programs and health insurance programs. We believe the three day waiting period under a workers compensation program is no different. In fact, workers' compensation experience in New Brunswick, Nova Scotia and Newfoundland & Labrador show similar patterns in both directions following significant benefit changes. In most situations, one cannot easily predict or assess the impact of a change in claiming patterns. ***The best that can be achieved is an assessment of the potential risk under plausible scenarios.***

The increases in claims costs associated with the removal of the three day waiting period could come from two sources. These two sources are:

1. *Payment of first three days for claims lasting less than 20 days will increase benefits paid out. This will have a small direct impact and will affect future claims only.*
2. *The cost of additional claims generated by the removal of the three day waiting period. This is an indirect impact which can be material. It also affects future claims only.*

There should be no measurable impact on the funding position of the Commission associated with this change.

For item 2, we need to estimate the number of additional claims and the average cost per claim. The reduction in claims experience that occurred when the three day waiting period was introduced in 1993 provides an indication of the increase in claims that might occur if the three day waiting period were removed. However, the increase in claims will not necessarily occur uniformly across claims by level of severity (i.e., average duration and/or cost level). It is quite likely that less severe claims would be subject to greater increases than more severe claims because more severe claims would not have been as significantly affected by the changes in 1993 as less severe claims.

We believe that the reduction in new claims after the 1993 changes cannot totally be attributed to the changes to the Act. Regular claim trends and changes in industry would have resulted in some reduction in new claims regardless of the changes made in 1993.

Analyses previously done on behalf of the Commission have shown that a significant portion of the reduction in new claims were influenced by changes to the Act in 1993 with the three day waiting period being the most important contributor. It is impossible to be definite on this issue. Therefore, the costing results could be seen as showing the potential financial impact on the Commission's operations, or stated alternatively, the financial risk involved with removing the three day waiting period.

We also reviewed certain insurance and workers' compensation studies which have shown that a change in benefit levels leads to a change in frequency and duration of claims. This is supported by evidence in New Brunswick, Nova Scotia and Newfoundland and Labrador where changes in benefits have led to a reduced claiming pattern and with respect to Newfoundland and Labrador, a later change in the other direction resulted in an increase in new claims.

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As stated previously, we believe that the increase in new claims would not be uniform across severity levels. We therefore relied, for developing further assumptions, on an analysis of claims severity, which was carried out internally by the Commission's actuary. This provided an analysis from 1990 to 2006 of the claims severity (severity being measured by days of lost time). This analysis provided the incidence and average cost per claim for each category of claims as follows:

- *No lost time*
- *Lost time less than 10 days*
- *Lost time 11 to 30 days*
- *Lost time 31 to 260 days*
- *Lost time more than 260 days.*

This information was used as a starting point to develop our assumptions with respect to the incidence of increased new claims by severity level and average cost per claim at each severity level. For the average cost per claim at each severity level, we only made changes to the "Lost time less than 10 days" and the "Lost time 11 to 30 days" categories as these would be the only two categories affected by the three day waiting period.

We used the average incidence rates by severity levels for accident years 1990-92 as a starting point. We examined claims incidence experience in other jurisdictions and based on information for the province of Quebec (most closely resembles pattern in New Brunswick after 1995) we reduced the 1990-92 New Brunswick incidence rates by 15%. These reduced rates were used as our benchmark for costing purposes. The average claims incidence for the years 2004-06 was used as the current level of new claims experience.

We then provided cost estimates based on two alternative assumptions. The first one assumes that new claims experience would increase by about 25% of the difference between the benchmark and current incidence rates if the three day waiting period was removed. The second alternative is based on 75% of the difference instead of 25%. This assumption was used for all claim severity levels except the "Lost time more than 260 days" category where we assumed that the incidence rate would increase by 0.01% of covered workers relative to the current incidence rate of 0.16% for both costing scenarios.

We recognize that this gives a very broad range of potential outcomes. However, there is no other way to approach this costing because the results are dependent on changes in claiming patterns, which by their nature are very difficult to predict.

These assumptions produced an assumed increase in the number of new claims due to the removal of the three day waiting period ranging from just under 4,000 to just under 12,000 per year. This compares to a total of 33,000 accepted claims per year prior to 1993 and the current level of about 12,000 accepted claims per year from 2004 to 2006.

Of the total increase in claims about 65% are assumed to be no lost time claims at an average cost of $450 per claim. The increase in claims incidence by severity levels is provided in Table 3.1 below.

No Lost time	5,902	+2,580	+7,669	19,217
<=10 days	3,694	+886	+2,752	8,584
11-30 days	741	+277	+956	2,205
31-260 days	1,503	+193	+533	2,426
>260 days	542	+34	+34	615
Total	12,382	+3,970	+11,944	33,046

The average cost per claim used before and after the removal of the three day waiting period is presented in Table 3.2 below.

No Lost time	450	450
<=10 days	950	1,050
11-30 days	2,500	2,600
31-260 days	14,300	14,300
>260 days	159,000	159,000

A summary of the estimated financial risk is presented in Table 3.3 below.

Annual Cost Increase (2006$)	$9.4 million	$18.7 million	$1.6 million	$3.2 million

Increase in average assessment rate	$0.14 per $100 of payroll	$0.27 per $100 of payroll	N/A	N/A

Therefore, if the three day waiting period was removed we estimate that the new accident costs would increase by a range of $0.14 to $0.27 per $100 of payroll for assessed employers and by $1.6 to $3.2 million per annum for self insured employers. These calculations make no allowance for the potential impact on administration costs of handling a larger volume of claims.

We were also asked to assess the impact of a two day and a one day waiting period. We have no data available to allow us to make such an estimate. Intuitively, we would expect that changing from a three to a two day waiting period would have a modest impact on claims incidence and resulting costs, and, a change from a three to a one day waiting period would likely be close to the estimates above.

The nature of this costing makes it very challenging to assess the potential cost impact since the proposed change impacts claiming patterns which are very difficult to predict. However, there is sufficient evidence that a change in benefit levels does materially impact claiming patterns. As a result of our analysis, our conclusion is that the results show a significant financial risk associated with the removal of the three day waiting period.

The estimates can be viewed as broad-based. If the change is made to the Act, actual results differing from the assumptions will lead to assessment rate changes that could be materially different from those presented in this report.

With respect to the actuarial factors underlying the calculations, we confirm that these were determined using accepted actuarial practice.

3. 8% Annuity Provision

The Act currently provides for contributions of 5% of the wage loss benefit paid to the injured worker after 24 consecutive months of compensation. These contributions are accumulated for purposes of providing an annuity at age 65 when wage loss benefit cease. The Panel asked that we estimate the cost associated with a change to the contribution rate from 5% to 8%.

The costing was carried out only for disability benefits since most of the survivor benefits paid for fatalities since 1982 already have an 8% annuity contribution rate. The costing is very straightforward as it simply involves grossing up current costs by 60% (i.e., effect of increasing from 5% to 8%).

In considering such a change, it is important to clarify whether the change will only be for future contributions or whether current accumulated unpaid balances from prior years will also be adjusted to an 8% level. For purposes of this exercise we provided the cost impact for both a future adjustment only and a past and future adjustment.

The results of our calculations based on the amounts recorded in the financial statements as at December 31, 2006 are presented in Table 3.4 for assessed employers and Table 3.5 for self insured employers. All dollar amounts are expressed in 2007 dollars.

Adjust accumulated 1993 to 2006 annuity contributions already made but not paid out	$10.2 million	$1.3 million*	$0.018
Adjust future contributions only on existing claims	$ 9.1 million	$1.1 million*	$0.016
Impact on future claims	N/A	$0.7 million	$0.010
Total	$19.3 million	$3.1 million	$0.044

* *based on amortization over 8 years*

Adjust accumulated 1993 to 2006 annuity contributions already made but not paid out	$1.6 million	N/A	N/A
Adjust future contributions only on existing claims	$1.5 million	Amount based on timing of payments related to $1.5 million increase in liabilities	N/A
Impact on future claims	N/A	$0.1 million	N/A
Total	$3.1 million	$0.1 million	N/A

Self insured employers pay the actual contribution as and when it is made. As a result, if the years 1993 to 2006 were adjusted, the self insured employers would have to pay an amount of $1.6 million immediately. In addition, they would have to increase in future contributions to pay off the additional $1.5 million in liability on existing claims and an additional $0.1 million per future accident year.

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We have also included a table providing a comparison of annuity provisions in other provinces.

NB	5% Annuity provision
NL	Replace lost employer and CPP pension
PE	Replace lost employer and CPP pension
NS	5% Annuity provision
QC	None but reduced wage loss benefits at ages 66, 67 and 68
ON	5% Annuity provision plus worker can put 5% from own wage loss benefits
MB	Complex 5% to 7% annuity provision less amount paid by employer after injury plus worker can match amount paid by Board
SK	10% Annuity provision
AB	Defined benefit pension of 2% per year of disability except for 100% Permanent Clinical Impairment (regular wage loss benefit for life)
BC	5% Annuity provision plus worker can put up to 5% from own wage loss benefits

The current provisions of the Act are such that it can be prohibitively expensive for an employer to provide top-up benefits to injured workers. The Act only provides for compensation payments after a worker has gone three days without pay and also provides for a claw back of wage loss benefits if the total compensation from all sources of an injured worker exceeds 85% of the net pre-accident earnings.

As a result of these provisions, payment of a top-up benefit by an employer creates a circular process which leads to the employer paying the full wage loss benefit and the Commission not being responsible for any wage loss payments. In addition, since no benefits are required to be paid by the Act in these circumstances, the total amount paid by the employer is taxable in the hands of the worker. Even though an employer would pay full wage loss benefits, the employer is still required to pay regular assessments based on the rate for the industry to which it belongs. There may be some relief through experience rating, but in most circumstances, it would not offset the additional costs paid directly by the employer.

The Nova Scotia Workers Compensation Act contained similar provisions from 1996 to 1999. In 1999 changes were made to remove the disincentive to an employer to consider offering top-up benefits to an injured worker.

The Panel requested that we provide background information on the changes introduced in Nova Scotia in 1999.

In 1999, the Nova Scotia government introduced two important changes to the Nova Scotia Workers Compensation Act as follows:

- Section 37(4) which deals with the two-fifths deductible (i.e., two day waiting period) was amended to remove the requirement that a worker had to go two days without pay,
- Section 49 which dealt with an all source limit of 85% of net pre-accident wages was repealed (i.e., section which required the Board to reduce wage loss benefits for other amounts received by the worker taking total net income above 85% of net pre-accident wages).

In Nova Scotia the process for assessed employers is now as follows:

- An employer can pay an injured worker regular wages after an injury
- If the employer pays the worker, the Board:
  - Reimburses the employer for wage loss benefits other than the two-fifths deductible in the first 5 weeks
  - Reimburses the employer for the two-fifth deductible if the worker's disability lasts more than 5 weeks
  - Issues a T5007 to the worker who effectively gets the workers compensation benefits portion of the employer payment on a tax free basis.
- Rate Setting and experience rating operate in the normal way, with any amount paid to the employer in lieu of the worker being part of the cost experience

It should be noted that it is expected that the presence of top-up benefits will lead to an increase in claim frequency and duration. The exact impact cannot be measured as there is not sufficient historical data to carry out an assessment. However, top-up benefits leads to increased compensation and insurance and workers compensation studies have shown increased frequency and duration of claims with increased benefits. Furthermore, an examination of lost time claims experience in Nova Scotia does show a modest increase in claims frequency in 1999 and 2000 after top-up benefits were made more accessible. It should be noted that this only suggests a link as there is no proof that the increase was linked to the presence of top-up benefits during this period in Nova Scotia.

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Section 4 – Operational Aspects

The Panel asked for our comments on the impact on the workers compensation system and financial implications, if they could be assessed, of changes that could be considered in areas that we categorized as operational aspects.

The three areas where changes in operations could be considered are:

a) CPPD Application Mandatory
b) Government Assessment Paying Basis
c) Potential Reduction in Duration

Our comments are presented below.

4.1 CPPD Mandatory Application

The initial request was to assess the financial impact of making application for Canada Pension Plan Disability benefits (CPPD) mandatory for injured workers who would meet certain pre-established duration criteria. After researching the availability of data, we concluded that a cost assessment would not be possible as historical data was not recorded in a manner that could allow for an analysis of this issue. The Panel then asked that we provide some comments on the potential magnitude of making CPPD application mandatory.

The Commission currently encourages workers who qualify for long term disability benefits to apply for CPPD since it is in their best interest for them to do so. An individual who is incapable of working does not contribute to the Canada Pension Plan and thus will receive a lower CPP retirement pension than if the individual had been earning during the years of disability. However, if the individual qualifies and receives a CPPD, the calculation of the retirement pension under the CPP is such that the period of disability does not impact the calculation of the retirement pension, the result being a better CPP retirement pension for a disabled individual in receipt of a CPPD versus an individual in similar circumstances who does not receive a CPPD.

The disability incidence rates under the CPP have dropped significantly during the mid to late nineties owing to some changes in disability management practices within the CPP. The December 31, 2003 actuarial valuation report of the CPP includes a chart which provides disability incidence rates for the CPP. This chart shows:

- Disability incidence rates peaked at about 5.5 per 1000 for males and about 5.0 per 1000 for females in the early to mid 1990's
- From 2002 to 2006, male rates have been slightly below and female rates slightly above 3.0 per 1000, a reduction of about 50% for males and 37% for females.

A review of the Commission's claims experience for LTD recipients over the 1997 to 2003 period shows that the number of new LTD recipients who qualified for CPPD over that period dropped by about 36%. This appears to be reasonably consistent with the changes at the CPP.

Using data from the CPP Actuarial Study No.1 of November 2002 and the CPP actuarial valuation report, we attempted to estimate the number of new workers compensation LTD recipients in New Brunswick who may be expected to qualify for CPP benefits. We then compared this expected number to actual results and concluded that at most there could be 4 to 8 additional CPPD recipients per year. Such a result could lead to an impact of up to $0.01 per $100 of payroll on the average assessment rate charged by the Commission.

This result is by no means guaranteed as we did not have any data on the number of LTD recipients who actually applied for CPPD. It could be that all applied already and in that scenario, there would be no impact on the Commissions financial results. In the end the decision on qualification for CPPD rests with the CPP, and making application does not mean that the claim will be accepted by the CPP.

Our conclusion is that, while making CPPD application mandatory may be a good policy decision in the interests of injured workers, the financial impact on the Commission is expected to be minimal and could not be used as an offset to justify potential cost increases in other areas. If this recommendation is made, it is important to require the development of clear rules as to when application for CPPD becomes mandatory. It would make no sense to have all injured workers apply as most return to work shortly after their injury and would not qualify in any event.

4.g) Government Assessment Paying Basis

Currently, the provincial government self insures its workers compensation costs. As a self insured employer, the government pays for the cash costs of claims as paid by the Commission plus an administration fee. The Commission records the government's liabilities on its financial statement along with an offsetting receivable from government. The government records its liabilities for workers compensation benefits in its financial statements.

The Panel asked for comments on the financial implications of government becoming an assessed employer under the workers compensation system. As an assessed employer, the government would pay a premium (called assessment) that would cover current and expected future costs of claims each year.

There is often a perception by stakeholders that government is advantaged by being self insured. Since the government is paying for the total cost of its claims and since it is liable for the future cost for its injured workers, government is paying for 100% of the cost of its claims. Since government is a very large employer, there is less risk of large

swings in costs from year to year which may present particular challenges for either the Commission or government. As a result, as long as government is paying a fair share of the Commission's administration and operation costs, they are not financially advantaged nor disadvantaged by being self insured. Furthermore, assessed employers are not sharing in any of the government's claims costs and are neither financially advantaged nor disadvantaged by the current approach. Finally, the risk of government ever defaulting on its obligations to pay its workers compensation claims because of bankruptcy or cessation of its operations is very remote.

If government were to become an assessed employer, there would need to be an agreement on how to deal with the continuing costs on prior year claims. This would involve a choice of:

1. Government paying a lump sum of over $100 million to the Commission to allow for the creation of a sufficient fund to pay the cost of prior year claims as and when they become due.
2. Government continuing to pay the cash costs on prior year claims plus paying assessments for future claims. The cash costs would decrease rapidly for the first few years and then would continue at a lower level for a long period of time until the last payment to the last remaining prior year claim is made.

Either way the cost of the prior year claims would be paid by government. However, under the first option, the invested assets of the Commission would increase and this sum would have to be managed by the Commission, most likely in the same manner as the current invested assets of the Commission are managed.

Since government would be paying assessments, the Commission would be collecting more assessments than the actual cash costs on the new claims and these excess sums would also have to be invested so that, together with investment earnings, the amount would be sufficient to pay for future costs on current claims. As such, the Commission's financial statements would be influenced by the risks and rewards of investing additional sums of money.

As long as the assessment rate charged to government is reasonable and fair, there likely would be very little direct impact on government and/or the system over the very long term as we would expect that assessment rates would be set a level that would require government to pay for its own experience.

For government, the financial implications would be as follows:

- Increased cash outlay because of need to pay assessments which includes costs for future liabilities on new claims plus payment on past claims as explained above.
- Protected against risk of large claims through large claims pooling present in the rate setting process used by the Commission (collective liability costs)
- Sharing in the cost of large claims of other employers (collective liability costs)
- Potential for lower variability in required payments from year to year because assessment rates currently based on 5 year claims costs average
- Slower recovery of gains if their own claims experience improves and vice versa if their claims experience deteriorates

For other employers the financial implications would be as follows:

- Government would pay its share of all other employer collective liability costs
- Other employers would pay their share of government collective liability costs

The administrative and other implications include the following:

- Commission would need to establish rules for government's
  - Industry classification
  - Rate setting
  - Application of experience rating
- Commission would need to collect payroll information possibly retroactively from government
- Province's practice with top-up benefits may need to be changed or government may end up paying twice for wage loss costs
  - Payment of assessments based on claims experience plus direct employer payments to workers through application of top-up benefits

It is difficult to be definitive on the points above as we cannot predict how the Board of Directors of the Commission would approach the determination of assessment rates for government. It is conceivable that government, because of its size would be put in its own rate group and as such may have special experience rating provisions that would lead to a long term result very similar to the present self-insured situation. For an employer of that size and of that capacity to absorb risk of workers compensation costs, it would be conceivable that a special assessment rate setting process would be considered.

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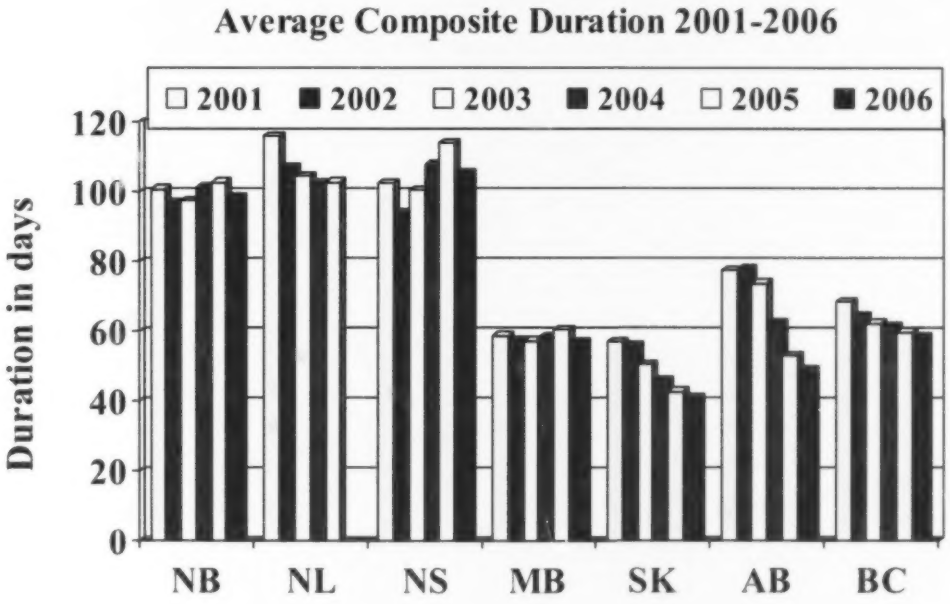
4. c) Potential Reduction in Duration

The Panel asked that we comment on the implications and provide an assessment of the potential cost savings that could be realized if the Commission was successful in reducing the average duration of claims by 10% or alternatively 20%.

In considering the possible reduction in duration of claims, it is useful to look at certain inter-jurisdictional statistics. The calculation of potential cost savings is relatively easy since it simply involves paying fewer days to a certain number of claimants at a certain average cost per day. The realization of an objective of reduced duration is an entirely different matter.

We have provided certain claim statistics as compiled by the Association of Workers Compensation Boards of Canada (AWCBC) on claims duration and frequency for the past few years where the information is available.

The first chart shows the average composite duration of lost time claims for three Atlantic Provinces and for the four Western Provinces.



The above chart shows that the Atlantic Provinces all hover around, 100 days with a couple of exceptional years in NS and NL while the Western Provinces were all below 60 days in recent years with SK and AB closer to 40 days. Looking at such statistics, it is

easy to get the impression that somehow substantial improvements would be possible in Atlantic Canada. However, there are many factors which contribute to these results, and these should not be ignored in assessing the potential for achieving a reduction in claims duration.

The following table shows the injury frequency in each of the same provinces.

NB***	1.80	1.42	-21%	1.33
NL	3.44	2.52	-27%	N/A
NS***	3.24	3.03	-6%	2.80
MB	5.29	4.75	-10%	4.65
SK	4.37	3.95	-10%	3.93
AB	3.04	2.23	-27%	2.24
BC	3.58	3.09	-14%	3.12

*** *influenced by the presence of a waiting period*

The above shows that the claim frequency tends to be lower in the Atlantic Provinces, which in and of itself usually leads to a higher claim duration.

The scope of coverage may also affect results. NB and NL cover well in excess of 90% of workers whereas MB and SK cover only about 70% of workers. Differences in the populations covered could also affect both duration and frequency.

Economic conditions are also known to affect claims duration. Economic conditions are much more favourable at present and in recent years in Western Canada than they have been in Atlantic Canada.

In summary, some factors that may influence duration results include:

- A low injury frequency is usually associated with higher relative duration
- The waiting period in NB and NS results in lower claims frequency
- Differences in the population covered including the low scope of coverage in MB and SK
- Differences in economic conditions

This leads to the following questions:

- Can a reduction in claims duration from current levels be achieved?
- How can it be achieved?
- If Achieved, Can it be sustained?

On the first three questions, a significant reduction in claims duration is potentially achievable at least in the short term. However, to be achieved, it would likely require the following:

- More rigorous approach to claims management
- More restrictive adjudication criteria and rules
- Reduced concern about whether actual return to work occurs or not (i.e., terminate payments when medical recovery achieved and/or when rehabilitation efforts completed)
- Possible increased emphasis on duties of employers to accommodate and duties of workers to cooperate

It is doubtful that an approach to claims management as described above could be sustained in the socio-economic environment in Atlantic Canada.

It is important to approach this question with an understanding of the socio-economic context which prevails in the region. Regions with a very strong economy, such as Alberta and to a certain extent other parts of Western Canada, present opportunities for re-employment at relatively good wage levels which do not exist in Atlantic Canada. Furthermore the formal education and training level of the workforce plays an important role in rehabilitation and return to work efforts. Concentration of the economy in very large centers (a large portion of Manitoba's population lives close to Winnipeg), also enhances opportunities for timely treatment of injuries and re-employment. Finally factors such as attitudes and expectations of workers and their employers and related cultural differences could also play a role.

We estimated the potential cost savings of a 10% and a 20% reduction in the average claim duration in New Brunswick. This would imply about a 10 or a 20 day reduction in duration on about 3,000 claims per year for assessed employers. Using the Commission's average wage loss benefit of about $76 per day for the first 7 months of 2007, we estimated the potential cost saving for the 10% reduction at $2.3 million (i.e., about $0.03 per 100 of payroll on the average assessment rate), and for the 20% reduction $4.6 million (i.e., about $0.06 per 100 of payroll on the average assessment rate).

All of the factors discussed above cannot be ignored in assessing the potential for achieving a reduction in claims duration. All Atlantic workers compensation systems have put significant effort into reducing claims duration with success when measured against claims that require claims management intervention.

The key issue is whether a reduction in claims duration is achievable and sustainable. We do not believe that the savings estimates provided above should be considered as offsets to potential increases in costs in other areas as savings in this area cannot be guaranteed. That being said, sustained and continued efforts in this area are extremely important to the system not the least of which are the benefits to injured workers themselves and their employers.

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We have presented a summary of our key observations and comments in three tables covering each areas we were asked to comment on and/or provided a financial assessment. Table 5.1 deals with coverage issues, Table 5.2 deals with benefits issues and Table 5.3 deals with operational aspects.

Item	Universal Coverage	Increase Maximum Compensable Earnings (MCE)
Request	Comment on impact of expanding compulsory coverage to all employers regardless of number of employees, including fishers.	Compare maximum in NB to other jurisdictions and comment on the effect of either removing the maximum or increasing it to two times the NBIAE.
Principal comments	• Currently only about 6% of workers are not covered. • Number of employers covered expected to double resulting in increased administration effort and likely costs. • Need clear rules to define coverage for the coverage of family members, proprietors, working owners, non-working owners.	• Comparison made with 2005 data and NB MCE in 2005 when measured relative to the distribution of individuals by income levels is among best in Canada (i.e. estimated that about 85% of workers earned less than MCE in 2005). • Increasing the MCE to two times NBIAE would result in a 2005 MCE of $67,900 compared to $50,900. • To get 90% of workers covered for their full earnings would require a MCE in 2005 dollars at $60,000. To reach 95%, the MCE would have to be $74,000.
Financial implications	• Increased administration costs. • Increased assessment revenue should cover increased claims payments as long as rates are appropriately set and registration of all accounts is achievable. • If coverage extended to self-employed, financial risk could increase because of variability in registration and in declared earnings.	• For Commission, increased assessment revenue would be expected to cover increased claims costs. • Employers who have workers earning above the current MCE would pay higher total assessments. • Some industries will be more impacted than others.

Item	Three Day Waiting Period	Annuity Provision	Top-up Benefits
Request	Assess the financial impact of eliminating or reducing the 3 day waiting period.	Assess the impact of increasing the current 5% annuity provision to 8% of wage loss benefit payments after 24 consecutive months of compensation.	Explain the approach taken in Nova Scotia in 1999 to eliminate the disincentive to employers of allowing or negotiating top-up of workers compensation benefits paid to injured workers.
Principal comments	• Expect increase in claims frequency if eliminated. • Difficult to predict exact impact. • Results presented reflect financial risk associated with a low and a high claims increase scenario.	• Costing does not include survivor benefits. • Costs depends on whether benefits adjusted retroactively to 1993 or not.	• Approach allows assessed employers to pay top-ups with Board reimbursing employers for amounts that would have been paid by Board. • Deemed portion of workers compensation benefits are not taxable to worker.
Financial implications	• Material financial risk if three day waiting period eliminated. • Average assessment rate could increase from $0.14 to $0.27 per $100 of assessed payroll. • Annual costs for self insured employers could increase by $1.6 to $3.2 million.	• Average assessment rate could increase from $0.026 to $0.044 per $100 of assessed payroll depending on whether accumulated funds for the period 1993 to 2006 excluded or included. • Liabilities for self insured employers would increase by $1.5 to $3.1 million and annual costs by $0.1 million.	• No costings provided. • Expect increase in claims frequency and duration which cannot be assessed.

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Item	CPPD Mandatory	Government Assessed	Duration of Claims
Request	Assess the potential financial impact, if possible, of introducing a provision that would require all injured workers to apply for Canada Pension Plan Disability (CPPD) benefits when they are expected to receive a long term disability benefit from the Commission	Comment on the impact on Government and other employers of requiring that Government become an assessed employer instead of the current self -insured arrangement.	Comment on and assess the impact of a reduction of 10% and 20% in the duration of lost time claims
Principal comments	• Significant reduction in individuals qualifying for CPPD in mid-90's. • Corresponding reduction in number of LTDs that have a CPPD Offset. • Beneficial to workers who can qualify for CPPD to apply for it.	• As long as administration expenses charged to government are fair, not much of an advantage or disadvantage for anybody. • Top up benefits practice of government may need to be altered if assessed (depends on how assessment rates calculated). • Likely that government would have its own rate group and may have a special experience rating arrangement.	• Very challenging to achieve further savings in this area. • May need to introduce more stringent claims management which may not be sustainable. • Cannot hope to achieve same duration as Western Provinces and sustain it. • Important to strive for improvements in this area and much effort has already been expended in Atlantic Canada. • NB compares well with NS and NL.
Financial implications	• Very rough approximation indicates at most a $0.01 per $100 dollars of payroll impact for assessed employers. • Should not use this estimate as an offset to cost increases in other areas.	• Government would have to pay either a lump sum of over $100 million or pay both an assessment rate and cash costs on prior year claims. • Some risk sharing for high cost claims would occur. • Not much of a financial advantage or disadvantage to anybody assuming rates are set fairly.	• If successful, could mean a reduction of $0.03 to $0.06 per $100 of assessable payroll for assessed employers. • Should not use this estimate as an offset to cost increases in other areas as achieving target is far from guaranteed.

We trust this report meets the requirements of the Review Panel. We would be pleased to discuss these issues further with the Review Panel if required.

THE WORKERS' COMPENSATION BOARD OF MANITOBA
Board of Directors' Matrix of Competencies

Excellent corporate governance depends on having a Board of Directors with the appropriate attributes and a mix of competencies that will support and advance the organization's mission. It is not necessary for all Board members to possess each and every one of the desired competencies, though the Board may prefer that each of its members attain a certain degree of proficiency in certain areas (like financial literacy, for example). It is recognized that, just as Board members will bring a variety of skills and experience to the table, they will also possess variety in the depth of their experience in various areas. **This diversity is both expected and valued.** It is incumbent on the Board to ensure its members are provided with ongoing training that will provide the skills necessary to perform their function.

In addition to the attributes, skills and experience listed below, the Board of Directors should reflect the diversity of Manitoba and the stakeholders of the WCB. This includes representation from key sectors served by the WCB and members from relevant Manitoba communities (for example, Aboriginal persons, women, people with disabilities, urban/rural, etcetera).

Attributes

Ability and willingness to ask challenging questions
Capable of a wide, balanced perspective
High degree of commitment to Workers Compensation
Integrity and high ethical standards
Sound judgment
Strong interpersonal skills

Skills and Experience	Definition
Financial expertise	• Accounting credentials; • An understanding of generally accepted accounting principles and financial statements and their application; and • Experience preparing, auditing, analyzing, or evaluating financial statements.
Financial literacy	The ability to read and understand financial statements.
Governance expertise	An awareness of current governance issues and trends, and direct prior board experience.
Human resources	Experience as a human resource professional.
Investment management expertise	• Extensive experience in the investment field; • Investment credentials, such as a CFA; • Membership in investment organizations such as PIAC; • Experience in institutional investing; • Having experience managing an investment portfolio through at least one severe bear market; and • Conversant with investment terminology.

Appendix 4
Matrix of Competencies

Skills and Experience	Definition
Leadership experience	Significant experience leading others; could be in any type of organization, in a paid or volunteer capacity.
Legal experience	An understanding of the law as it applies to organizations like the WCB; not necessarily with a law degree.
Risk management experience	Experience identifying, planning for and putting in place strategies to mitigate organizational risks.
Strategic planning experience	Experience participating in or leading an organization in planning for its future.
Senior management experience	Experience as a paid senior manager (i.e., director, Vice-President or higher, Deputy Minister, Board member, etc.) in any organization. This could include private business, public sector, or organized labour.
Understanding of the workers compensation system	An awareness of the role the workers compensation system plays in Manitoba. Not necessarily direct experience with or within a workers compensation board.

Source: Information provided by WCB - Manitoba

Setting of Policies and Stakeholder Consultations

	Board sets Policies and Direction	External Consultation	Means of Obtaining Stakeholder Views
AB	Yes	Yes	Stage 1 - A summary of a proposed new or amended policy is posted on the website for 60 days. Stage 2 – A draft policy is posted on the WCB website for 60 days to provide advance notice and seek input on an intended policy change.
BC	Yes	Yes	Includes preparation and distribution of discussion papers. Instructions on how to provide your comments are provided with each policy issue.
MB	Yes	Yes	Consultation process is coordinated through the Office of the Corporate Secretary. The Board committees have developed a list of specific or representative groups and individuals to be consulted. Staff can also participate. Committee members may also solicit input directly from their representative communities.
NB	Yes	Yes	Have developed a list of representative groups to be consulted. No formal process for stakeholder identification.
NL	Yes	Yes	In 1996, the Commission conducted a *Client Services Policy Manual Holder Survey*. A Focus Group comprised of a group of internal and external stakeholders used the survey feedback and further consultative approaches to restructure the *Client Services Policy Manual (1998)*.
NT/NU	Yes	Yes	Research for approved priority issues includes consultation with experts on the issue. Then, an initial draft policy is prepared for consideration by Senior management who will evaluate potential impacts and provide guidance to enhance a draft policy; and/or stakeholders and/or the public, as appropriate.
NS		Yes Yes	Consultation Approach For Minor Policy Items: A draft policy and background document will be posted on the WCB website for a period of 30 calendar days allowing for stakeholders submissions; a notification will be sent to those individuals included on the "Key Policy Stakeholder Consultation List" that policy item has been posted; and a consultation summary document highlighting the key issues raised by will be posted to the WCB website.

Appendix 5
Stakeholder Consultations

	Board sets Policies and Direction	External Consultation	Means of Obtaining Stakeholder Views
			For Major Policy Items: Stage 1 - An issues identification document will be posted on the WCB website for a period of 45 calendar days; a copy of the issue identification document will be mailed to those individuals included on the "Key Policy Stakeholder Consultation List"; during the consultation period, the Board of directors and WCB staff will contact those individuals on the "Key Policy Stakeholder Consultation List" to encourage participation; and a consultation summary document highlighting the key issues raised by will be posted to the WCB website.
ON	Yes	Yes	Includes consultation papers, information sessions and request for written submissions.
PE	Yes	Yes	Includes E-mail Notification Service, draft policy document
QC	Yes	No	Most of the consultations are with internal groups/departments, depending on the subject. In some cases, worker or employer representatives are consulted.
SK	Yes	-	Formal process within the WCB.
YT	Yes	Yes	Public consultation is a legislative requirement for all policies affecting claims for compensation. The draft policy must be published at least once a week for two consecutive weeks in a newspaper circulated in the Yukon. After the second week of publication, the Board of Directors will accept submissions for a further 30 days.

Source: Policy Manuals, contact with jurisdictional WCBs